

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP (PD)No.3411 of 2012

and

M.P.No.1 of 2012

1.R.Natarajan
2.E.Shanmugavel
3.S.Sankaranarayanan
4.N.Senthamarai Kannappan
5.S.Sakunthala
6.S.Sridevi

.. Petitioners

Vs.

P.Parthiban
..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition by directing the learned Principal District Judge at Chengalpet to number the petition dated 23.08.2012 in Unnumbered I.A.SR.No.5935 of 2012 in C.M.A.No.81 of 2008.

For Petitioners : Mr.Kumar

For Respondent : Mr.M.Mohideen Pitchai

ORDER

The petitioners are the defendants 9 to 14 in O.S.No.277 of 2007. The case of the revision petitioners is that the respondent herein as plaintiff filed a suit against the petitioners herein and others in O.S.No.277 of 2007 before the Sub-Court, Chengalpet for declaration to declare the plaintiff's title to the suit property and for permanent injunction. Further the plaintiff sought for the relief of declaration to declare the sale deeds executed by the defendants 7 to 8 as null and void. The said suit was resisted by the revision petitioners by filing written statement.

2.The further case of the revision petitioners is that pending suit, the plaintiff filed I.A.NO.723 of 2007 for interim injunction restraining the defendants 9 to 14 from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The revision petitioners have filed an application in I.A.No.37 of 2008 in O.S.No.227 of 2007 under Order.14, Rule 2 (2) (a) of CPC r/w section 12 (2) of Tamilnadu Court Fees and Suit Valuation Act and Rule. 7 (3) of Civil Rules of Practice to try the under valuation of 1st relief of declaration as a preliminary issue in the suit. Both the applications

were tried together and a common order was passed on 05.08.2008 by dismissing both the application filed by the revision petitioners and respondent herein.

3.As against the order rejecting to grant interim injunction, the plaintiff/ respondent herein filed appeal in C.M.A.No.81 of 2008 before the Principal District and Sessions Judge, Chengalpet. Pending disposal of the above said C.M.A, the revision petitioners filed application in unnumbered I.A.S.R.No.5935 of 2012 seeking for a direction to conduct an enquiry under section 340 r/w Section 195 (1) (b) (i) of Cr.P.C against the respondent herein on the ground stating that the respondent herein marked documents before the Learned Principal District Judge at Chengalpet which were fabricated. So in order to cheat the Court, filed the false records, forged order fabricated document before the court which is punishable under section 191, 192 & 193 of IPC.

4.The learned Principal District Judge, Chengalpet was pleased to return the above said application filed by revision petitioners and the same was represented by the revision petitioners on 02.08.2012. Thereafter the Learned Principal District Judge was pleased to take up the unnumbered I.A.S.R.No.5935 of 2012 for maintainability on

23.08.12 and passed order on the same date by holding that the C.M.A.No.81 of 2008 is filed by the plaintiff/ respondent herein as against the dismissal order made in I.A.No.723 of 2007 in O.S.No.227 of 2007 dated 05.08.08. Since the subject matter is related to the original suit in O.S.No.277 of 2007 which is pending before the Principal Sub-Court, Chengalpet. Hence the above said unnumbered I.A. is returned to be presented before the proper court.

5. Aggrieved over the above said order returning the application filed by the revision petitioners, they have come up with the present civil revision petition.

6. I have heard Mr. Baskar, learned counsel appearing for the petitioners and Mr. M. Mohideen Pitchai, learned counsel appearing for the respondent and perused the records.

7. A careful perusal of the records show that the revision petitioner's application filed under section 340 read with Section 195(1)(b)(i) of Cr.P.C was returned on the ground of maintainability with a direction to the revision petitioners to present the same before the proper court as per law. As against the order of returning the unnumbered I.A, the revision petitioners have approached this Court

and filed this civil revision petition under Article 227 of Constitution of India.

8. According to the revision petitioners that the respondent herein/ plaintiff marked Ex.P5, P19 and P21 in C.M.A.No.81 of 2008 which are the certified copies of the Chitta, Adangal and the same has been obtained by creating forged records. Therefore in order to punish the respondent herein, the revision petitioners filed application under section 340 r/w 195 (1) (b) (i) of Cr.P.C to conduct an enquiry into the offence punishable under Section 193 of IPC committed by the respondent herein P.Parthiban. The Learned Counsel for the petitioner also relied on a judgment reported in **2008 (8) SCC 34** in the case of Mahila Vinod Kumar –Vs- State of Madhya Pradesh wherein the Hon'ble Apex Court has held that para 10 as follows:

“10. For exercising the powers under the section the court at the time of delivery of judgment or final order must at the first instance express an opinion to the effect that the witness before it has either intentionally given false evidence or fabricated such evidence. The second condition is that the court must come to the conclusion that in the interest of justice the witness concerned should

be punished summarily by it for the offence which appears to have been committed by the witness. And the third condition is that before commencing the summary trial for punishment the witness must be given reasonable opportunity of showing cause why he should not be so punished. All these conditions are mandatory. (See *Narayanaswani -Vs- State of Maharashtra*). The above said judgment of the Hon'ble Apex Court referred by the revision petitioners may not helpful for them since it deals with the conditions to be followed in the case of giving false evidence and that stage is not come in this case."

9. At this juncture, this court has perused all the alleged forged documents which would disclose that they are prior to the filing of suit. In this context, it is useful to refer the Judgment of the Hon'ble Apex Court reported in **2005 (2) TNL R 176 (S.C Iqbal Singh Marwah & another -Vs- Meenakshi Marwah & another)** wherein the Hon'ble Apex Court has held that the applicability of Section 195(1)(b)(i) of Cr.P.C would be attracted only when the offence enumerated has been committed with respect to a document produced or given in evidence in a proceeding in any court i.e., during the time when the document was in custodia legis.

10. After elaborate discussion over the law laid down by the Hon'ble Apex Court in ***Sujith Singh -Vs- Palbir Singh*** reported in ***1996(3) SCC 533*** and ***Sachinanth Singh -Vs- State of Bihar*** in ***1998 (2) SCC 493***, the Hon'ble Apex Court has clarified that the Principle of Custodia legis would apply in respect of a document produced or given in evidence in a proceeding of court i.e.; when the document was in the custody of the Court. Here the case on hand is there is no dispute that the documents alleged or claimed to be forged are much earlier to the filing of the suit, so it is made it clear that the remedy available to the petitioner is to file appropriate complaint before the Jurisdictional Magistrate by involving the relevant provision of law. So the order of the court concern does not warrant interference by this Court.

11. This Court is of the opinion that the impugned order of the learned Principal District Judge, Chengalpet is not warranted interference by this court. The revision petitioners can very well file the above said application before the proper court as per law laid down by the Hon'ble Apex Court in the said Judgments. In view of the foregoing reason, I do not find any merits in this civil revision petition.

12. Accordingly, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.01.2017

Note: Issue order copy on 21.04.2017

Index: Yes

Internet: Yes

vs

To

The Principal District Court,
Chengalpattu.

M.V.MURALIDARAN, J.

VS

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