



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2017
(Reserved on 05.06.2017)

WEB COPY

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP(PD) (MD)Nos.1066 to 1068 and 1087 of 2016

and

CMP(MD)Nos.5348, 7005 and 5415 of 2016

M.N.Prabakaran

... Petitioner/ 2nd Respondent/
2nd Defendant in all CRPs

vs.

1)T.S.Srinivasan

2)T.S.Balakrishnan

3)D.L.Menaka

... Respondents/ Petitioners/
Third Respondent/ Plaintiffs/
Third Defendant in all CRPs

Petitions filed under Article 227 of the Constitution of India, against the fair and executable order dated 15.03.2016 passed in I.A.Nos.479, 480 and 481 of 2015 and 294 of 2016 in O.S.No.656 of 2010 by the Principal Subordinate Court, Madurai.

For Petitioner : Mr.T.R.Jeyapalam
For Respondents : Mr.K.Muralidharan
1 & 2 in all the cases

COMMON ORDER

These four revision petitions are directed against the order passed by the Trial Court in allowing the interlocutory applications to reopen, recall, to produce documents and to receive certified copy of the will dated 24.12.1987 and deposition of DW1 in O.S.No.1113/2008.

2.The plaintiffs are the respondents 1 and 2 in these revision petitions. The suit is for declaration to declare that the suit properties are the Private Trust properties and to declare the sale deed dated 27.10.2007 executed by the 1st defendant in favour of the 2nd defendant as null and void.

3.The plaintiffs claim trusteeship based on a joint will executed by D.R.Lakshmanarao and D.L.Saradha on 27.06.1985 and the subsequent wills of D.L.Saradha dated 17.01.1991 and 09.08.2006.



4.The case of the 2nd defendant who is the revision petitioner herein is that he purchased the property from the 1st defendant who derived title through the joint will of Dr.Lakshmanarao and D.L.Saradha dated 27.06.1985. Therefore, his purchase of the suit property through the sale deed dated 27.10.2007 is valid.

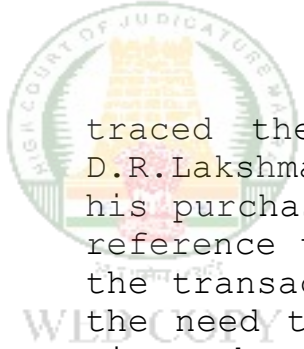
5.During the course of trial, the revision petitioner in his evidence has deposed that he purchased the property from the 1st defendant on the basis of the will dated 24.12.1987 alleged to have been executed by Dr.Lakshmanarao. Further, the sale deed which is under challenge also contains a reference about the will of Dr.Lakshmanarao dated 24.12.1987. Therefore, it is contended by the plaintiff that to prove his case and to disprove the contra case regarding the validity of the sale deed dated 27.10.2007, the will and the patta transfer proceedings which was effected based on the will dated 24.12.1987 and sale deed dated 27.10.2007 pursuant to the said will are necessary documents.

6.As early as 28.01.2013, the plaintiffs attempted to get those documents by seeking a direction to the Tahsildar for production of the documents through I.A.No.101 of 2013, but later withdrew that application since they were able to get those documents under the Right to Information Act. Hence, the present interlocutory applications filed.

7.The revision petitioner had resisted these applications on the ground that these applications are not maintainable and filed only to sidetrack the issue. The examination of witnesses commenced on 02.03.2010 and completed after long delay, only on 17.01.2013. After closing of defendants side witnesses, the plaintiffs filed I.A.Nos.101 and 102/2013 to issue summons to Tahsildar and for production of documents. Those petitions were strongly opposed. So, sensing that applications will be dismissed, they withdrew those applications and had filed the present interlocutory applications couching differently but for the same relief. The 2nd defendant does not trace title to the will dated 24.12.1987, therefore, there is no need to let in any rebuttal evidence. No purpose will serve in reopening and recalling the witness to mark the said will dated 24.12.1987 and other revenue proceedings which have no binding effect on the Civil Court.

8.The Trial Court after considering the rival contentions has allowed the applications leading to the filing of the present revision petitions by the aggrieved 2nd defendant.

9.The points canvassed before the Trial Court are again <https://hcservices.ecourts.gov.in/hcservices/> canvassed before this Court. The learned counsel for the revision petitioner emphasised the point that when the 2nd defendant has



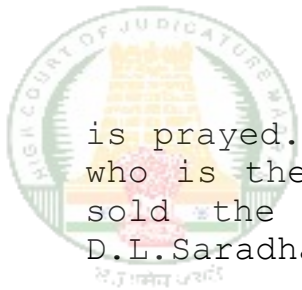
traced the title of his vendor only from the joint will of D.R.Lakshmanarao and D.L.Saradha dated 27.06.1985, the validity of his purchase should be tested only through that will and not with reference to any other will which is irrelevant and unconnected to the transaction. Further, the learned counsel also contended that the need to adduce rebuttal evidence does not arise in this case since there is no presumption of fact to rebut.

10.It was also contended that the patta transfer proceedings issued by the Revenue Department have no evidentiary value or binding effect when the very right to alienate the property is challenged before the Civil Court. Further, it is contended by the learned counsel for the revision petitioner that the impugned orders are passed in violation of Order 18 Rule 17. Therefore, he pleaded for allowing the revision petitions by setting aside the impugned orders dated 15.03.2016 passed by the Court below in I.A.Nos.479, 480 and 481 of 2015 and 294 of 2016 in O.S.No.656 of 2010.

11.Per contra, the learned counsel for the respondents/plaintiffs submitted that the will dated 24.12.1987 sought to be produced finds place in the recital of the sale deed dated 27.10.2007 executed by the 1st defendant in favour of the 2nd defendant. In their deposition, DW1 and DW2 have also spoken about this will. DW2 in his evidence has stated that the date of the will is wrongly mentioned in the sale deed. Therefore, the Trial Court has rightly allowed the petitions enabling the plaintiffs to prove the case of voidness shrouded in the impugned sale deed dated 27.10.2007.

12.The above submissions of the learned counsels and the perusal of the records of the Court below reveal that the first item of the suit schedule property is owned by D.R.Lakshmanarao which he got through partition with his brother. In respect of the first and second items of the suit schedule property, D.R.Lakshmanarao and his wife D.L.Saradha have jointly executed a will dated 27.06.1985, reserving their right to revoke the will jointly during their life time or by the surviving executor in case of earlier demise of any one of the executors. Both the parties had accepted the execution of this will and there is no dispute about its genuineness. The fact that D.R.Lakshmanarao expired on 27.08.1989 and D.L.Saradha expired on 23.05.2007 are also not disputed.

13.The plaintiffs claim that after the demise of her husband D.R.Lakshmanarao, their sister D.L.Saradha cancelled the joint will dated 27.06.1985 and executed a will on 17.01.1991. However, she later cancelled the said will dated 17.01.1991 and executed a fresh will on 09.08.2006. Based on these averments, the relief of declaration to declare the suit property as private trust property



is prayed. Whereas, the 2nd defendant's case is that his vendor who is the beneficiary under the joint will dated 27.06.1985 has sold the property to him. The alleged subsequent will of D.L.Saradha cancelling the joint will is not valid.

14. In the course of trial, the plaintiffs who are challenging the alienation of the suit property by the 1st defendant in favour of the 2nd defendant have come to know about the alleged will of D.R.Lakshmanarao dated 24.12.1987 which is reflected in the sale deed dated 27.10.2007 and in the patta transfer proceedings. Hence, they have thought fit to produce the document through the witness for proper appreciation of the suit. The Trial Court has rightly allowed these applications since the documents sought to be produced will have a bearing in deciding the validity of the sale deed dated 27.10.2007.

15. The contention of the revision petitioner that he claims title only through the joint will dated 27.06.1985 and not through the will of D.R.Lakshmanarao dated 24.12.1987, therefore, the plaintiffs cannot seek for production of the will dated 24.12.1987 to establish the illegality in the sale deed is unsustainable and runs contrary to law of evidence. It is a settled principle of law that one who pleads a fact has to prove it. The plaintiffs have to fall or stand on their pleadings and evidence.

16. Here is a case, where the plaintiffs challenge the validity of the sale deed dated 27.10.2007. The said sale deed refers to a will dated 24.12.1987 alleged to have been executed by D.R.Lakshmanarao. The entire suit centres on the wills executed by D.R.Lakshmanarao and his wife D.L.Saradha on various dates. Therefore, it is just and necessary for the Court to look all the wills claimed to have been executed by them to arrive at a right decision. Omission to look at any of the will may lead to miscarriage of justice.

17. In **K.K.Velusamy vs. N.Palanisamy (Civil Appeal Nos.2795-2796 of 2011 dated 30.03.2011)**, the Hon'ble Supreme Court has held as under:-

'8. Order 18 Rule 17 of the Code enables the Court, at any stage of a suit, to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit. The power to recall any witness under Order 18 Rule 17 can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. The power is discretionary should be used sparingly in appropriate cases to enable the court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in



the evidence of a witness who has already been examined [Vide Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate - 2009 (4) SCC 410]. Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo moto, or at the request of any party, so that the Court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course permit the parties to assist it by putting some questions.''

18. Therefore, this Court finds no ground to interfere with the orders of the Court below. Accordingly, the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To
The Principal Subordinate Judge,
Madurai.

+1 CC to Mr.T.R.Jeyapalam, Advocate, SR No. 59837.

+1 CC to M/s.K.MURALEETHARAN, Advocate, SR No. 59939

NBI

PSM/KKR/SAR4/29.06.2017/5P/4C

Order made in
CRP(PD) (MD) Nos.1066 to 1068
and 1087 of 2016
12.06.2017