



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2017

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (PD) (MD) No.371 of 2016
and
CMP (MD) No.1612 of 2016

1.S.Senthil
2.Kalyani

... Petitioners/Respondents/Defendants

Vs.

1.Rajakumari
2.Viswanathan
3.Soman

.. Respondents/Petitioners/Plaintiffs

PRAYER: Petition filed under Article 227 of the Constitution of India, to call for records relating to I.A.No.220 of 2015 in O.S.No.18 of 2009 dated 23.07.2015 on the file of the District Munsif Court, Devakottai and set aside the same.

For Petitioners : Mr.V.Perumal

For Respondents : No appearance

O R D E R

This Civil Revision Petition has been filed to set aside the order dated 23.07.2015 passed by the learned District Munsif, Devakottai, in I.A.No.220 of 2015 in O.S.No.18 of 2009.

2. The brief facts of the case are as follows:

2.i) The suit in O.S.No.18 of 2009 was filed for declaration of easementary rights and for permanent injunction. In that suit, cross-examination was pending.

2.ii) At that stage, the plaintiffs filed an Interlocutory Application in I.A.No.220 of 2015 under Order 12 Rule 8 C.P.C and Section 151 of C.P.C for production of original Agreement deed dated 02.10.2000, which was entered between the parties before the Villagers and Panchayatats regarding the suit property. According to the plaintiffs, the original Agreement deed was under the custody of the defendants. The defendants filed a counter stating that no panchayat was held and no agreement was also entered between them.



Further, the said Agreement was not marked in the suit and seeking production of an unmarked document itself is not in accordance with the Code of Civil Procedure.

2.iii) The trial court, after analyzing the oral and documentary evidence, has held that if original Agreement deed dated 02.10.2004 is under the custody of the defendants, the same shall be produced within 30.07.2015. On non-production of the same by the defendants, the plaintiffs are entitled to produce the xerox copy of the said Agreement deed under Section 66 of Indian Evidence Act. Aggrieved against the order of the trial court, this Civil Revision Petition has been filed before this Court.

3. Learned counsel appearing for the petitioners vehemently argued against the order passed by the trial court on four specific grounds. Firstly, the plaintiffs have filed the suit for declaration of easementary rights and therefore, they have to prove their case by pleadings and documents. Secondly, since execution of the alleged document itself is denied by the defendants, the plaintiffs cannot be allowed to mark xerox copy as per Section 66 of Indian Evidence Act. Thirdly, the Original Agreement Deed, on which the plaintiffs have relied, is an unregistered document, which cannot be used even for collateral purpose, as per the various Judgments of the Hon'ble Supreme Court and this Court. Fourthly, the respondents/plaintiffs have not informed the Commissioner with regard to the alleged exchange of property in favour of the petitioners, which would prove the *malafide* intension of the respondents/plaintiffs. Further, according to the petitioners, the witnesses, who deposed before the court, are fake witnesses.

4. I have paid my anxious attention to the submissions made by learned counsel for the petitioners and perused the materials available on record. Though notice has been served on the respondents/plaintiffs, they are not before this Court to defend the case.

5. The only issue to be decided before this Court is whether the learned Judge was right in directing the petitioners herein to produce the so-called agreement, when the defendant has specifically denied the very execution of the agreement and whether the learned Judge was right in directing the plaintiff to filed photocopy of the so-called agreement in the absence of the petitioners producing the same.

6. Perusal of the record show that even when the Commissioner has visited the premises, the plaintiffs did not whisper anything in respect of the so-called agreement. The suit itself is for declaration of easementary rights and it is for the respondents/plaintiffs to prove their case through documents. The learned Judge ought not to have directed the defendants to produce a document which is not under the custody of defendants. It is for the respondents to prove their case and therefore, in my considered



opinion, the impugned order passed by the learned Judge is liable to be set aside and hence it is set aside.

Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected C.M.P.(MD) No.1612 of 2016 is closed.

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Sd/-
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

The District Munsif, Devakottai.

+ 1 CC TO Mr.V.PERUMAL, ADVOCATE IN SR No. 85756

CM

TE/JC/SAR-1 : 21/02/2018 : 3P/3C

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