



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.02.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP(MD) No.799 of 2016 and CMP(MD).No.4020 of 2016
CRP(MD).No.540 of 2015 and M.P(MD).Nos.1 and 2 of 2015

CRP(MD).No.540 of 2015

1.S. Periyasamy
2.P.Rajendran
3.P.Ramachandran
4.P.Rajaraman

Petitioners /Defendants

Vs.

N. Periyasamy

Respondent /plaintiff

CRP(MD).No..799 of 2016

P.Rajendran : Petitioner / Petitioner/2nd Defendant

1.N. Periyasamy Respondent No.1/ Respondent/plaintiff
2.S.Periyasamy Padaiyatchi
3.P.Ramachandran
4.P.Rajaraman : Respondents on 2 to 4/Respondents
1,3&4/Defendants 1,3&4

Prayer in CRP.No.540 of 2015 : This Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 04.02.2015 made in O.S.No.155 of 2008 on the file of the I Additional District Munsif, Kumbakonam.

Prayer in CRP.No.799 of 2016 : This Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 24.03.2016 made in I.A.No.42 of 2016 in O.S.No.155 of 2008 on the file of the I Additional District Munsif, Kumbakonam.

For Petitioners
in CRP.No.540 of 2015
in CRP.No.799 of 2016

:Mr. D. Rajkumar
: Mr.T. Antony Arul Raj

For Respondent
in CRP.No.540 of 2015

: Mr.V.Achuthan



C O M M O N O R D E R

The CRP.(MD).No.540 of 2015 is filed to set aside the fair and decreetal order, dated 04.02.2015 made in O.S.No.155 of 2008 on the file of the I Additional District Munsif, Kumbakonam.

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The CRP.(MD).No.799 of 2016 is filed to set aside the fair and decreetal order, dated 24.03.2016 made in I.A.No.42 of 2016 in O.S.No.155 of 2008, on the file of the I Additional District Munsif, Kumbakonam.

2. The issue in both the Civil Revision Petitions are one and the same and hence, these Civil Revision Petitions are disposed of by this Common order.

3. The revision petitioner in CRP.(MD).No.799 of 2016 is second defendant in the suit in O.S.No.155 of 2008. The first respondent / plaintiff filed a suit for injunction restraining the petitioner and other defendants from interfering with his peaceful possession and enjoyment of the suit property and prevent him to carry out the cultivation works in the suit property. According to the first respondent / plaintiff, the petitioner on 18.06.2008 tried to interfere with his possession and enjoyment of the suit property. Hence, he has filed the suit. The petitioner filed a written statement and contesting the suit. After framing issues, trial was commenced. The petitioner examined himself as DW.1. After closing evidence, on the side of the first respondent / plaintiff, the petitioner was examined as DW.1. The petitioner sought permission to mark the discharge summary issued by SNI Hospital, Kumbakonam with regard to treatment taken by the first petitioner in CRP(MD). No.540 of 2015, in the hospital as inpatient, through DW1/ second petitioner. The said request was opposed by the first respondent / plaintiff, on the ground that DW.1 is not a competent person to mark those documents. The learned Judge rejected the request of the petitioner, on the ground that DW.1 is not the competent person to mark the document. He can mark the documents only through Doctor who issued certificate or concerned Hospital authority.

4. Against that, the petitioner filed CRP(MD).No.540 of 2015.

5. Subsequently, the petitioner along with three defendants pending Civil Revision Petition filed another I.A.No.42 of 2016, seeking permission to mark the documents with regard to admission and discharge card and other documents through DW.1. According to the petitioner, in spite of summons issued to the hospital, who issued certificates not appeared before the Court to give evidence. Now, the Doctor who treated and issued certificate is dead and the hospital is also not functioning and become defunct. The respondent filed a counter affidavit and opposed the said application and stated that similar request made by the petitioner and others was rejected by the Court and against that petitioner filed CRP.(MD) No.540 of 2015 and the same is pending. Pending Civil Revision



Petition, Interlocutory Application is not maintainable.

6. The learned Judge considering the earlier order dated 04.02.2015, rejected the similar request on the ground that pendency of CRP.No.540 of 2015, the petitioner has not specifically mentioned the nature of the documents to be marked and dismissed the application.

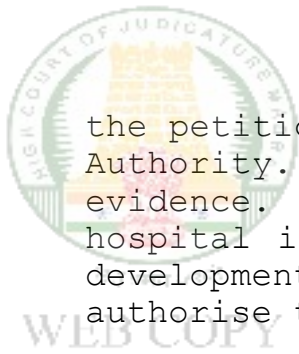
7. Against that, CRP(MD).No.799 of 2016 is filed.

8. The learned counsel appearing for the petitioner submitted that the learned Judge had erred in holding that DW.1 is not the competent person to mark the document Exs.P19 to P23 and failed to see that marking of the documents does not prove the contents of the document. The parties have to produce evidence to prove the contents. On the date of alleged interference of the possession of first respondent / plaintiff, first defendant / first petitioner was hospitalized and petitioners 2 to 4 were attending in the hospital. The learned counsel further submitted that the learned Judge failed to consider the subsequent developments that the Doctor who issued certificate is no more and the hospital has also become defunct and is not functioning. The learned Judge failed to consider that I.A.No.42 of 2016 is filed only due to the subsequent development as stated above.

9. The learned counsel appearing for the first respondent / plaintiff submitted that DW.1 / second petitioner is not competent to speak about the documents sought to be marked, as the documents or do not relate to him and he is not the author of documents or connected to the management of the Hospital. The learned Judge has given valid reason for rejecting the permission sought for by the petitioners and prayed for dismissal of both Civil Revision Petitions.

10. I have heard the learned counsels appearing on either side and perused the materials available on record.

11. The respondent / plaintiff filed the suit for injunction on the ground that petitioners tried to interfere with her peaceful possession and enjoyment of the suit property on 18.06.2008. According to the petitioners, no such incident took place on 18.06.2008. The first petitioner was hospitalized in SNI Hospital, Kumbakonam on the date of alleged interference and petitioners 2 to 4 were attending him and to prove the same, they sought permission to mark the discharge summary and other documents through DW.1 / Second petitioner. DW.1 is not the author of the document sought to be marked and also those documents do not relate to him, but, relate to his father / the first petitioner. The first request by the petitioners in this regard was rejected on the ground that second petitioner / DW.1 is not a competent person to mark the document and same could be marked only through author of the documents or management of the Hospital Authorities. According to



the petitioner, they took several summons to the Doctor and Hospital Authority. But, they did not appear before the Court to give evidence. Now, the Doctor who issued certificate also dead and hospital is also not functioning and become defunct. Subsequent, development as alleged by the petitioners do not empower or authorise the second petitioner as DW.1 to mark the those documents.

12. The learned Judge has considered all the materials on record in a proper perspective and has given cogent and valid reasons for passing order in the suit in O.S.No.155 of 2008 and I.A.No.42 of 2016 in O.S.No.155 of 2008 on the file of the I Additional District Munsif, Kumbakonam. Further the learned Judge had exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.

13. It is open to the petitioners to mark those documents through first petitioner, as those documents are related to the first petitioner for the alleged treatment taken by him in the hospital.

14. In the result, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

SD/-
ASSISTANT REGISTRAR(RECORDS)

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

The I Additional District Munsif, Kumbakonam.

+1 CC TO MR.T.ANTONY ARUL RAJ,ADVOCATE,SR NO.6996

TRP
MAS/PM-PN:15.03.2017:2P-3C

CRP(MD) No.799 of 2016 and
CRP(MD).No.540 of 2015
07.02.2017