

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 20.03.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.3795 of 2017 and C.M.P.No.17656 of 2017

Ettiappan Petitioner/Defendant

Vs.

P.Dhanabagiam Respondent/Plaintiff

This Civil Revision Petition is filed under Article 227 of Constitution of India against the order, dated 18.08.2017 made in I.A.No.427 of 2017 in O.S.No.488 of 2010 on the file of the Sub Judge, Tambaram.

For Petitioner : Mr.B.Vijay
For Respondent : Mr.N.Manokaran

ORDER

According to the petitioner, the respondent has filed a suit in O.S.No.488 of 2010 before the Sub Court, Tambaram. Written statement was filed on 5.9.2011 by the petitioner/Defendant. Plaintiff's side evidence was closed. After examination of D.W.1, the suit was posted for further evidence of the defendant on 16.6.2017. At this stage, the petitioner has filed an application in I.A.No.427 of 2017 under 75 of Civil Rules of Practice to cause

production of (i) Settlement A Register from the year 1943, (ii) Adangal from 1943, (iii) F.M.B. with sub division particulars of S.No.8/2, Kovilampakkam Village, Tambaram Taluk. The court below recorded a finding that the revenue records sought for in the present application is very much available in O.S.No.487 of 2010 on the file of the court below. In the written statement filed by the defendant/petitioner herein, petitioner did not dispute the pendency of another suit in O.S.No.487 of 2010. In the said suit, Advocate Commissioner has filed a report along with the Surveyor report with revenue records which clearly states about the sub division of S.No.8/2 taken place four decades ago. In order to prove title, the respondent/plaintiff produced patta Ex.A4 in the main suit and the petitioner herein admitted during the course of deposition deposed that the present suit is for the property situated at S.No.2/A7 and the property in S.No.8/2 is the property of the petitioner herein. Since the relevant records are available in O.S.No.487 of 2010, the present application cannot be considered at the belated stage of the suit. Challenging the said order, the revision petitioner/defendant has preferred the present civil revision petition before this Court.

2 According to the petitioner, plaintiff has not filed any of the original title deeds mentioned in the plaint at the time of institution of suit. She has filed only sale deed, dated 5.2.1991 executed in favour of said

Muralidharan and settlement deed, dated 12.11.2009 executed in favour of the plaintiff. According to the petitioner, plaintiff predecessor in title namely first owner Rajarathina Mudaliyar has no right to execute any sale deed in respect of the suit property. In order to prove that the plaintiff predecessor in title has no title to suit property, he filed the instant application to cause production of revenue records pertains to 1943, because Rajarathina Mudaliyar has claimed title to suit property only based upon revenue record and not on any independent registered title deed. Relying upon the Commissioner report filed in another suit, the court below erroneously dismissed the instant application. According to the petitioner, Rule 75 confers powers to civil court to summon official documents for production to the court to adjudicate any matters or issues in controversy before the Court in a civil suit. The learned counsel for the petitioner relied on the decision of this Court in S.KUPPUSAMY VS. VENGATESAN [C.R.P.(PD) NO.3740 OF 2008, DATED 23.1.2009] to contend that the Court can entertain the application filed under Rule 75 of Civil Rules of Practice to summon the revenue records even in the absence of filing of application for issuance of certified copy to the concerned authority. The learned counsel for the petitioner also relied upon the decision of this Court In R.RAVI VS. I.PANDIYARAJAN [2007(4) CTC 133] to contend that it is always open to the parties to choose their own witnesses to examine so as to prove their case and it cannot be prevented by other party by stating that the petitioner is

trying to bring some irrelevant evidence. The learned counsel for the petitioner also relied upon the decision in T.CHANDRAKALA vs. PALANIAMMAL 4 OTHERS [2011(2) MWN Civil 426] to contend that the public authority can be summoned to give evidence in the civil suit along with connected records to adjudicate controversies involved in the suit. The revision petitioner came to know about the defect in title of plaintiff predecessor in title only after completion of plaintiff side witnesses and further, trial was taken up only in the year 2017 and the petitioner has filed the instant application before closure of evidence, therefore, there is no inordinate delay. When the defendant has set up a different title and disputed the very title of the plaintiff, burden of proof shift on the defendant to disprove the plea set up by the plaintiff. Therefore, the order passed by the court below is perverse and the same is liable to be set aside.

3 According to the learned counsel for the respondent, the court below has rightly dismissed application by holding that the application filed by the petitioner is at belated stage i.e. after seven years to prolong the trial. The revenue records as sought for the by the petitioner is very much available before the court. According to the learned counsel for the respondent/ plaintiff, burden of proof lies on the plaintiff to prove her case and there is no need for the defendant to prove negative. Suit is pending for the past seven

years. Petitioner has filed the instant application with an intention to prolong the disposal of the suit. Twin requirement of Rule 75 of Civil Rules of Practice has not been complied with as nowhere in the affidavit the petitioner has stated that he applied for certified copy of the documents for which he relied on the decision reported in (2015 (2) L.W. 460). The petitioner/ defendant neither denied the source of title pleaded in para 5 of the plaint nor he filed a list of witnesses in the written statement as per Order 16 Rule 1 (1) C.P.C. Therefore, the Civil revision petition is liable to be dismissed.

4 Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials on record.

5 Before advertng to the rival contentions, it would be useful to extract Rule 75 of Civil Rules of Practice.

“75. Production of records in the custody of a Public Officer other than a Court-

(1) A summons for the production of records in the custody of a Public Officer other than a Court shall be in Form No.23 and shall be addressed to the Head of Department concerned and in the case of summons to a District Registrar or a Sub Registrar of Assurances, it shall be addressed to the Registrar or Sub Registrar in whose office or sub-office, as the case

may be the required records are kept. A summons for the production of revenue paper kept in any office in a district shall in all cases be directed to the Collector of the District.

Provided that where the summons is for the production of village accounts, including field measurement books, such summons shall be addressed to the Tahsildar or to the Deputy Tahsildar in independent charge, as the case may be.

(2) Every application for such summons shall be made by a verified petition setting out (i) the document or documents the production of which is required; (ii) the relevancy of the document or documents; and (iii) in case where the production of a certified copy would answer the purpose whether application was made to the proper officer for a certified copy of copies and the result of such application.

(3) No Court shall issue such a summons unless it considers the production of the original necessary or is satisfied that the application for a certified copy has been duly made and has not been granted. The Court shall in every case record its reasons in writing and shall require the applicant to deposit in Court, before the summons is issued to abide the order of the Court, such sum as it may consider necessary to meet the estimated cost of taking a copy of a document when produced.

(4) On production of the documents in obedience to the summons the Court unless it thinks it necessary to retain the original shall direct a copy to be made at the expense of the applicant, and shall with all convenient speed return the original retaining the copy.

(5) Unless, the Court requires the production of the original every such summons, to a Public Officer shall state that he is at liberty to produce instead of the original a copy certified in the manner prescribed by Section 76 of the Indian Evidence Act, 1872.

(6) Nothing in the above Rules shall prevent a Court of its own motion from issuing a summons for the production of public records or other documents in the custody of a public officer if it thinks it necessary for the ends of justice to do so. The Court shall in every case record its reasons in writing."

6 Let this Court will see whether the petitioner has satisfied the Rule 75 of Civil Rules of Practice. As per Rule 75 (2) of Civil Rules of Practice, the revision petitioner ought to have applied for certified copies of documents sought for by him. Admittedly, the petitioner has not filed any application for the aforesaid documents before the Tahsildar, Tambaram. Now, the petitioner has filed the instant application to summon Tahsildar, Tambaram to cause production of (i) Settlement A register from the year 1943, (ii) Adangal from

the year 1943 and (iii) FMB with sub division particulars of Survey No.8/2 of Kovilambakkam village, Tambaram Taluk. In **S.KUPPYSAMY VS. VENKATESAN AND OTHERS (2009 Indlaw Mad 126]**, this Court held that “In the facts and circumstances of this case, it is obvious and axiomatic that the document, which the plaintiff seeks for being summoned is only the report and it is not a document like Patta, Chitta or Adangal relating to which, certified copies could be issued by the authorities”. In the case in hand, the documents sought for by the petitioner is Adangal from the year 1943, Settlement A Register and FMB with sub division particulars. The certified copies of these documents should have been obtained or should have applied for it by the petitioner before commencement of trial itself. Therefore, the petitioner has not complied with the Rule 75 of Civil Rules of Practice. Therefore, the decision of this Court in **T.CHANDRAKALA VS. PALANIAMMAL AND 4 OTHERS [2011(2) MWN (Civil) 426]** wherein this Court relied upon the decision of this court in **S.Kuppusamy** case cited supra, would not rescue the petitioner in the instant case.

7 According to the learned counsel for the respondent, the instant application has been filed belatedly only with malafide intention to protract the trial of the suit. The suit is of the year 2010. Written statement has been filed by the petitioner on 5.9.2011. According to the petitioner, the

trial commenced only in the year 2017. Thus, the revision petitioner had sufficient time to obtain certified copies of the documents sought for by the petitioner. Therefore, the petitioner has filed the instant application belatedly. Further, in a title suit, onus of proof lies on the plaintiff to prove her predecessor's title as per the revenue records. The burden of proof still lies on the respondent/plaintiff who by way documentary evidence have to prove her predecessor's title. Therefore, the defendant cannot seek revenue record by stating that the plaintiff's predecessor has no title. Hence, the order passed in the instant application is confirmed. Therefore, there is no error or illegality in the impugned order passed by the court below.

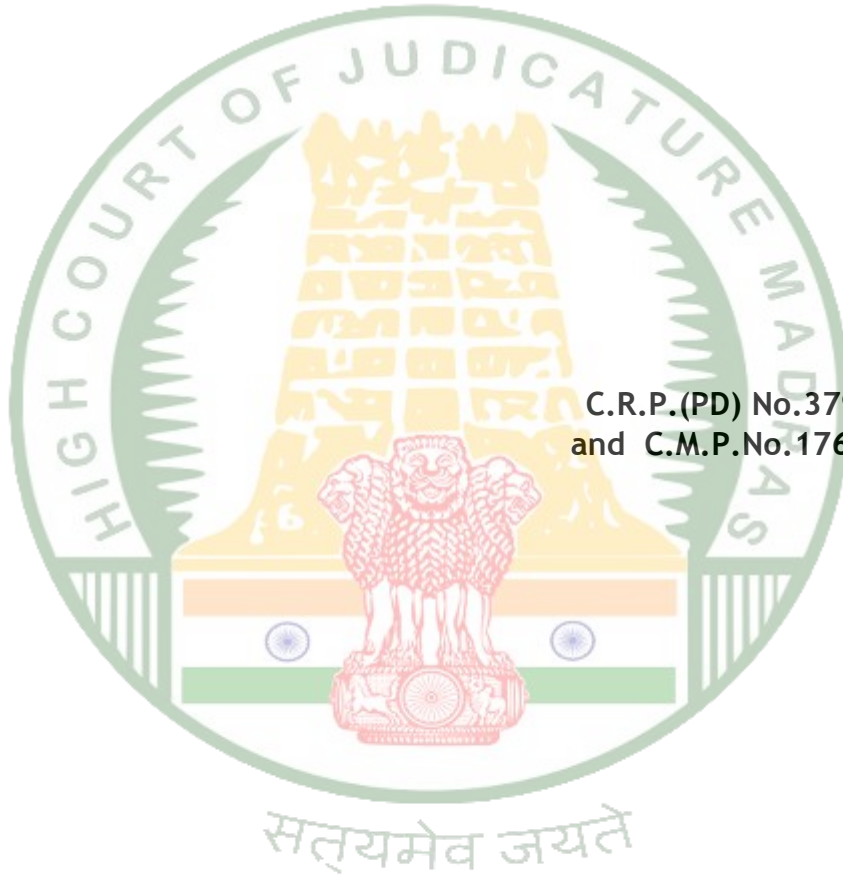
8 Thus, the Civil revision petition fails and the same is dismissed.

No costs. Connected miscellaneous petition is closed.

20.03.2018

Speaking/Non Speaking order
Index: Yes/No
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To
The Sub Judge, Tambaram.

D.KRISHNAKUMAR,J.



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Dated: 20.3.2018