

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.696 of 2015
& M.P.No.1 of 2015

Murugan

.. Petitioner

Vs.

Ayyanar

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 24.09.2014 made in I.A.No.579 of 2014 in O.S.No.142 of 2008 on the file of the Additional District Munsif Court, Villupuram.

For Petitioner : Mr.K.Govi Ganesan

For Respondent : Mr.N.Suresh

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 24.09.2014 made in I.A.No.579 of 2014 in O.S.No.142

of 2008 on the file of the Additional District Munsif Court, Villupuram.

2. The petitioner is second plaintiff and respondent is third defendant in O.S.No.142 of 2008 on the file of the Additional District Munsif Court, Villupuram. The petitioner along with his brother, the deceased P.Shanmugam filed said suit against the respondent and six others for declaration to declare the petitioner along with defendants 4 to 7 are absolute owners of A and B schedule properties and for recovery of possession and for mandatory injunction directing the defendants 1 and 2 and respondent to remove the illegal foundation to an extent of 400 sq.ft. in the A and B schedule properties. The respondent filed written statement on 11.08.2008, which was adopted by the first defendant and are contesting the suit. The petitioner filed reply statement and subsequently, respondent filed additional written statement on 13.07.2009. Trial commenced and the petitioner let in evidence and evidence on behalf of the petitioner was closed. On behalf of the defendants, D.W.1 was examined in chief and was cross-examined in part and the suit was posted for further evidence on behalf of the defendants. At that stage, respondent filed I.A.No.579 of 2014 under Order VII Rule 14-A of C.P.C., to condone

the delay in filing the documents and to receive the documents mentioned therein.

3. According to the respondent, he has to file some important documents to substantiate his case and he got the documents only at the time of filing of the application. The respondent further stated that delay in filing the documents is neither wilful nor wanton.

4. The petitioner filed counter affidavit and submitted that after cross-examination of D.W.1/first defendant, respondent has come out with the present application only to fill in lacuna. The respondent filed written statement on 11.08.2008 mentioning the documents now sought to be filed. The reason given by the respondent is not a valid reason and prayed for dismissal of the application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, held that though the respondent filed application under Order VII Rule 14-A of C.P.C., the learned Judge considered the application filed under Order VIII Rule 1-A(3) and held that the documents can be

received at any stage of the suit and admissibility and relevancy can be decided only at the time of marking of the documents and except objection with regard to Court fee, other documents can be marked subject to objection, allowed the application.

6. Against the said order dated 24.09.2014 made in I.A.No.579 of 2014, the present Civil Revision Petition is filed by the petitioner/plaintiff.

7. The learned counsel for the petitioner reiterated the averments made in the counter affidavit filed in the said application and the contentions raised in the grounds of revision.

8. The learned counsel for the respondent submitted that the respondent has given valid reason for condoning the delay in filing the documents. The respondent was able to obtain the documents only at the time of filing of the application and respondent explained the reason for not filing the application earlier. He further contended that the learned Judge considered the provisions under Order VIII Rule 1-A(3) and judgments relied on by the respondent, allowed the application giving valid reason. The learned Judge further held that

the petitioner can object to marking of the documents and the Court can mark the documents subject to objection. The documents sought to be marked are public documents and the respondent is seeking to mark the certified copies of the said documents only and prayed for dismissal of the Civil Revision Petition.

9. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

10. From the materials available on record, it is seen that the respondent has filed written statement on 11.08.2008 and he has mentioned the sale deed dated 28.07.1914 by which one Kullammal purchased the property from Venkatachala Gounder. He has also mentioned about the Will executed by Kullammal. He has not mentioned the date of the Will in the written statement. The learned Judge while considering the scope of Order VIII Rule 1-A(3) of C.P.C. failed to consider Order VIII Rule 1-A(1) and (2) of C.P.C. The learned Judge has extracted the sub-rule (3). The entire Order VIII Rule 1-A of C.P.C. is extracted hereunder for better appreciation:

Order VIII Rule 1-A of C.P.C.

"1-A.Duty of defendant to produce

documents upon which relief is claimed or relied upon by him._(1) Where the defendant

bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to documents_

(a) produced for the cross-examination of the plaintiff's witnesses, or

(b) handed over to a witness merely to refresh his memory."

11. As per the Order VIII Rule 1-A(1) of C.P.C., when the defendant files the written statement, he must give a list of documents relied on by him. He must also file the said documents and the copy of the same along with the written statement. As per the Order 1-A(2), if the documents are not in the possession of the defendant, if possible, he must state in whose possession or power the said documents are.

12. In the present case, the respondent has not furnished any list of documents relied on by him and he has not filed any documents or copy of the documents along with the written statement. In respect of the registered Will executed by Kullammal, he has not given the date of the Will. He has not stated who is in possession of the sale deed dated 28.07.1914, by which according to the respondent, Kullammal purchased the property and the registered Will dated 12.07.1925 alleged to have been executed by Kullammal. Even now the respondent has not stated that who is in possession of the above documents. The respondent has also not stated the reason for his inability to produce the original documents and reason for seeking to mark the certified copies of the documents.

13. As per the Order VIII Rule 1-A(3) of C.P.C., with leave of the Court, the defendant can file the documents relied on by him, which were not filed or a list was given along with written statement. The said power of the Court is only discretionary power. The said power has to be exercised judicially and leave can be granted for special reason to be recorded. The learned Judge failed to consider Order VIII Rule 1-A(1) and (2) of C.P.C. and allowed the application on the ground that the petitioner has right to object the marking of the documents. The learned Judge failed to consider the fact that the respondent has come out with the present application after first defendant was examined as D.W.1 and was cross-examined. The respondent has also not given any reason for not obtaining the certified copies of those documents earlier and not filing the same earlier along with the written statement or before examining D.W.1. The learned Judge failed to consider the contention of the petitioner that the respondent has come out with the present application only to fill in lacuna as D.W.1, who is father of the respondent, admitted in his cross-examination that Kullammal has nothing to do with the suit property and has referred to the Will dated 03.12.1980 executed by one Krishnammal and that he was claiming title based on the two sale deeds of the year dated

1961 and 1962. It is pertinent to note that the first defendant has adopted the written statement filed by the respondent. In view of the above facts, the contention of the learned counsel for the petitioner that the respondent has come out with the present application only to fill in lacuna, has considerable force. The learned Judge failed to exercise the discretionary power judicially and the reason given by the learned Judge is not valid.

14. For the above reason, the Civil Revision Petition is allowed. The impugned order of the learned Judge dated 24.09.2014 is set aside and I.A.No.579 of 2014 is dismissed. If the certified copies of the documents mentioned in the petition were already marked, the learned Judge is directed to return the same to the respondent. As the suit is of the year 2008, the learned Judge is directed to dispose O.S.No.142 of 2008 as expeditiously as possible, in any event, not later than, three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

03.01.2018

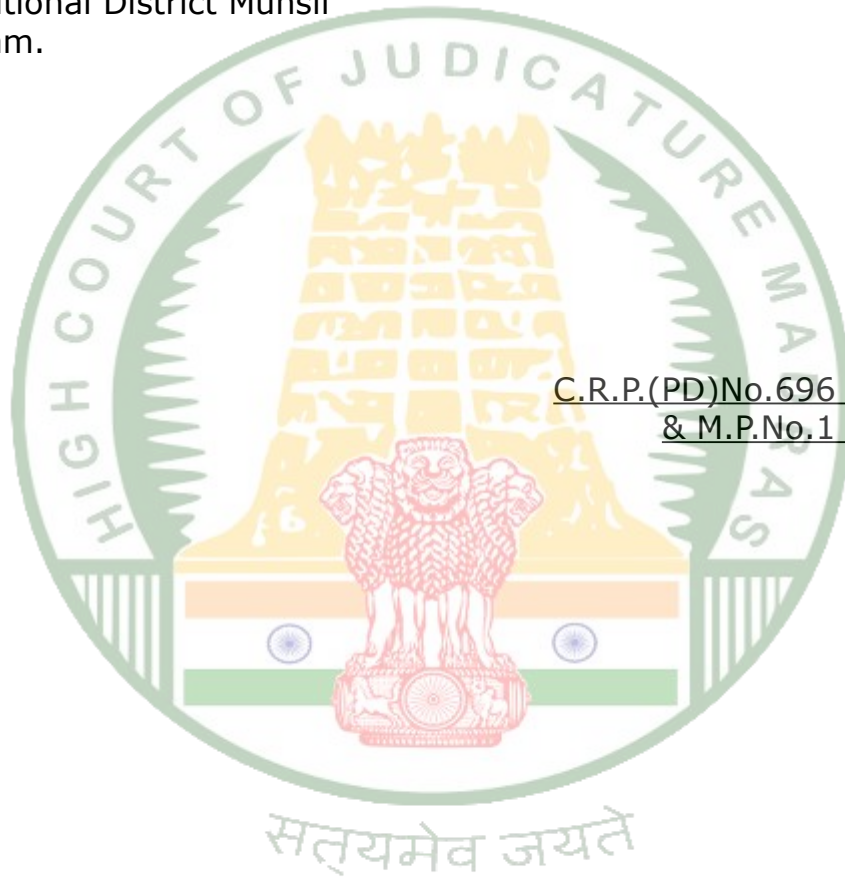
Index : Yes/No
Speaking/Non-Speaking Order
kj

V.M.VELUMANI, J.

kj

To

The Additional District Munsif
Villupuram.



C.R.P.(PD)No.696 of 2015
& M.P.No.1 of 2015

WEB COPY

03.01.2018