

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.706 of 2015
& M.P.No.1 of 2015

1.N.P.Lakshmanan
2.K.Gunasekaran

.. Petitioners

Vs.

R.Ranganathan

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 13.10.2014 made in I.A.No.55 of 2014 in O.S.No.324 of 2012 on the file of the III Additional District Munsif Court (Trainee District Judge) Salem.

For Petitioners : Mr.R.Nalliyappan

For Respondent : Mr.P.Jagadeesan

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 13.10.2014 made in I.A.No.55 of 2014 in O.S.No.324 of

2012 on the file of the III Additional District Munsif Court (Trainee District Judge) Salem.

2. The petitioners are defendants and the respondent is plaintiff in O.S.No.324 of 2012 on the file of the III Additional District Munsif Court, Salem. The respondent filed said suit for partition. The petitioners filed written statement in the month of September 2012 and are contesting the suit. Trial commenced and the respondent let in evidence and closed his side. The second petitioner filed proof affidavit on 06.09.2014. The petitioners filed I.A.No.55 of 2014 under Order VIII Rule 1-A(3) of C.P.C. to condone the delay in filing the documents and to receive the same. According to the petitioners, four documents, which were mentioned therein, sought to be filed are vital to prove their case. Those documents got mixed up with other papers. Therefore, they could not file the same in time.

3. The respondent filed counter affidavit and denied the averments made in the said application and submitted that those documents sought to be filed by the petitioners are created documents for the purpose of suit. Those documents are

subsequent to filing of the suit and relates to the property belonging to the second petitioner and not connected with the suit property.

4. The learned Judge, considering the averments made in the affidavit, counter affidavit and the provisions of Order VIII Rule 1-A and Rule 2 of C.P.C., dismissed the application holding that the documents are subsequent to filing of the suit and are not relevant to the suit property and the petitioners have not mentioned those documents in the written statement.

5. Against the said order of dismissal dated 13.10.2014 made in I.A.No.55 of 2014, the present Civil Revision Petition is filed by the petitioners.

6. Heard the learned counsel for the petitioners as well as the respondent and perused the materials available on record.

7. From the materials available on record and impugned order of the learned Judge, it is seen that the learned Judge has considered each and every documents sought to be filed and marked and Order VIII Rule 1-A and Rule 2 of C.P.C. and rightly dismissed the application.

8. The entire Order VIII Rule 1-A and Rule 2 of C.P.C. are 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.

Rule 2 of C.P.C.

2. New facts must be specially pleaded. The defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality. "

9. As per 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 and file the same into Court along with the certified copies. As per Order VIII Rule 1-A(3) of C.P.C., the defendant can file document subsequent to filing of the written statement with the leave of the Court. The Court has power to grant leave at any stage of the suit. But the said discretionary power must be exercised judicially and the reasons to be recorded. As per Order VIII Rule 2

of C.P.C., the defendant must raise in the written statement all his defence.

10. In the present case, the petitioner has not pleaded about the documents in the written statement now sought to be filed and marked. The learned Judge considering Order VIII Rule 1-A and Rule (2) of C.P.C. has rightly dismissed the application. There is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 13.10.2014.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

03.01.2018

Index : Yes/No
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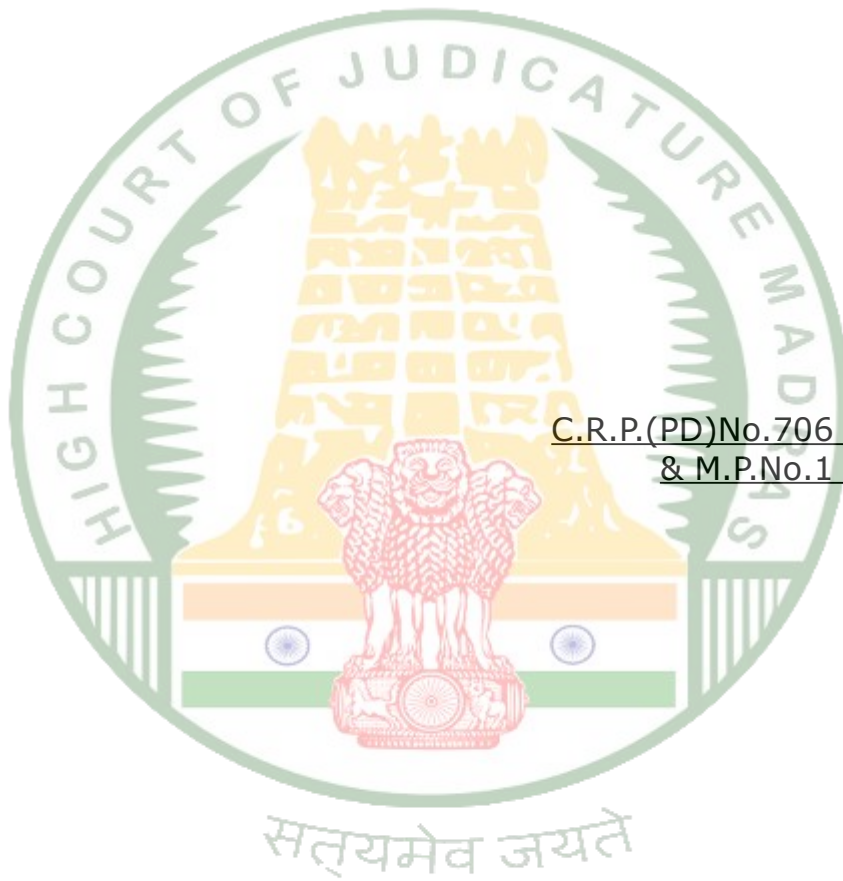
The III Additional District Munsif

Salem.

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V.M.VELUMANI, J.

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