

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.06.2018

CORAM

The Hon'ble Mr.Justice **P.VELMURUGAN**

CRP(PD)No.822 of 2018

and

C.M.P.No.4525 of 2018

1.Amaravathy

2.Saarannan

..

Petitioners

vs.

Thirunesan Thirumalnesan

..

Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 10.01.2018 passed in I.A.No.14416 of 2017 in O.S.No.2182 of 2011 by the learned V Assistant Judge, City Civil Court, Chennai.

For Petitioners ... Mr.S.L.Sudarsanam

For Respondent ... Mr.T.Nirmaleswar

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ORDER

The Civil Revision Petition has been filed by the petitioners to set aside the fair and decretal order dated 10.01.2018 passed in I.A.No.14416 of 2017 in O.S.No.2182 of 2011 by the learned V

Assistant Judge, City Civil Court, Chennai.

2. The petitioners herein are the defendants and the respondent herein is the plaintiff.

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

(i)The respondent / plaintiff filed a suit in O.S.No.2182 of 2011 on the file of the X Assistant City Civil Court, Chennai against the petitioners / defendants seeking permanent injunction restraining the defendants from interfering with the peaceful possession, enjoyment and stay of the plaintiff in the suit property with ingress and egress of the suit property without due process of law and from alienating half undivided share in the suit property belongs to the plaintiff's father by virtue of Registered Sale Deed bearing document No.130/88 before the Joint Sub Registrar-I, District Registrar Office, Chennai Central in favour of any person without due process of law. To contest the suit, written statement was also filed by the defendants. Pending suit, the defendants filed an application in I.A.No.14416 of 2017 under Order XVI Rule 6 CPC to issue Subpoena to the Commissioner or any other officer nominated by the Commissioner at the office of the Commissioner of Customs, (Airport), Customs House, Chennai to appear before the Court for producing the document namely, the

order dated 08.05.1998 passed by the Commissioner of Customs (Airport), vide Ref.O.S.No.69/97-RD under Sl.No.12/98-Commr. - Airport. The trial Court dismissed the said application by order dated 10.01.2018. Challenging the said order, the present civil revision petition has been filed by the petitioners.

4.The learned counsel for the petitioners submitted that since the father of the petitioner himself has admitted before the Office of the Commissioner of Customs (Airport), Custom House, Madras - 1 that he was married and he has two sons and three daughters, totally five children. To prove the same, he has also produced a copy of the order dated 08.05.1998 passed by the Commissioner of Customs (Airport). Therefore, it is necessary to ascertain, whether there are other legal heirs and they have to be impleaded to the suit proceedings.

5.The learned counsel for the respondent submitted that the suit is only filed for injunction, but not for partition. Further the order dated 08.05.1998 passed by the Commissioner of Customs (Airport), vide Ref.O.S.No.69 of 97-RD under Sl.No.12/98-Commr. - Airport was subsequently, set aside by the Appellate Tribunal by its order dated

03.07.2006 in appeal No.C/1293/98. Therefore, it is not necessary to summon subpoena to the Commissioner to ascertain as to whether the father of the petitioner has got five children or not.

6.Heard the submissions made by learned counsel for the petitioners and the learned counsel for the respondent and perused the materials available on record.

7.It is seen that the respondent/plaintiff filed a suit for bare injunction against the petitioners/defendants. The defendants filed I.A.No.14416 of 2017 under Order XVI Rule 6 CPC to permit the petitioner to issue Subpoena to summon the Commissioner of Customs, (Airport), Customs House, Chennai to appear before the Court for producing the document namely, order dated 08.05.1998 passed by the Commissioner of Customs (Airport), vide Ref.O.S.No.69/97-RD under Sl.No.12/98-Commr. - Airport. The trial Court dismissed the said application on the ground that the question regarding two children born through the plaintiff's father through the petitioner is irrelevant fact to the matter in issue in this case. Hence, there is no need to examine the Commissioner, Customs for that purpose.

8.A perusal of records reveal that once the respondent/plaintiff himself admitted that he is claiming title through his father, it is just and necessary to ascertain as to whether the father of the petitioners/defendants has got how many children or some other children and the said issue has to be decided by the trial Court.

9.The contention of the petitioners is that the father of the petitioners himself admitted that he has five children before the Office of the Commissioner of Customs (Airport), Custom House, Madras - 1. To prove his contention, the learned counsel produced a copy of the order dated 08.05.1998 passed by the Commissioner of Customs (Airport) before this Court. The relevant portion of the said order reads as follows:

"In his voluntary statement given before the Customs Officers immediately after the seizure, Shri N.Thirunesan after furnishing his personal and family details had inter alia stated that he was aged 47 years; that his father's name is late A.Nesadurai; that he was a permanent resident of U.K. holding Sri Lankan passport No. M 1522739 dated, 15.04.1997 issued at Colombo; that he was married and has two sons and three daughters; this his wife

was residing with him in UK; THAT ONE SON AND ONE DAUGHTER were studying in London and the other son and two daughters are studying in Tamil Nadu, India that his residential address in UK IS No.31, Baseing Close London E64PJ, Phone No.00441715118974; that he was an agricultural engineer by profession and he was presently doing consultancy in London and earn around 1,200/- U.K. Pounds per month and also doing part-time foreign exchange dealings for M/s.Aarabbe Travels and Foreigh Exchange Bureau."

10.The order in appeal No.C/1293/98 there is no finding regarding legal heir of the father of the respondent/plaintiff and the petitioners/defendants.

11.In view of the above, this Court is inclined to pass the following order:

"(i)The order dated 10.01.2018 passed in I.A.No.14416 of 2017 in O.S.No.2182 of 2011 by the learned V Assistant Judge, City Civil Court, Chennai is set aside.

(ii) The trial Court is directed to issue

subpoena to the Commissioner of Customs, (Airport), Customs House, Chennai to appear before the Court.

(iii)The trial Court is further directed to examine the witness in accordance with law ."

In the result, the civil revision petition is allowed. No costs.
Consequently connected miscellaneous petitions are closed.

19.06.2018

Index:Yes/No

Speaking Order:Yes/No

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To

The Registrar,
City Civil Court,
Chennai.

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P.VELMURUGAN.J,

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