

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 11th DAY OF SEPTEMBER 2018

THE HON'BLE DR. JUSTICE ANITA SUMANTH

A.No.6065 of 2018

in

C.S.NO.653 of 2011

1. P.Chandrasekar
No.304, Krishna Building,
St.Antoony Road, Kalena,
Bombay 98

2. R.Jagathi
Green Gardens, 388/6,
'L' Blcok, Annanagar,
Chennai-102.

3. M.Jamuna
Retreat Building, 119,
G.N.Chetty Road, 3rd Floor,
Flat No.3B, T.Nagar,
Chennai 17.

....Plaintiffs

-vs-

1. Mrs.P.Chokkammal alias
P.Sokkamma (*) (Deceased)
No.3/6, Arvind Nagar,
Kalina, Bombay-29.

2. P.Kumar
No.3/6 Arvind Nagar,
Kalina, Bombay-29.

3. P.Ramesh
No.3/6 Arvind Nagar,
Kalina, Bombay 29.

(*) (Plaintiffs and defendants 2 & 3 are recorded as legal heirs of the deceased 1st Defendant as per order dated 11.02.16 on memo dated 07.08.2015 in C.S.No.653 of 2011)

... Defendants

A.No.6065 of 2018

Mrs.P.Chokkammal @ P.Sokkamma
(Deceased legal heirs on records)
W/o.Palani Achari,
No.3/6, Arvind Nagar,

Kalina, Bombay-29.

2. P.Kumar
No.3/6 Arvind Nagar,
Kalina, Bombay-29.

3. P.Ramesh
No.3/6 Arvind Nagar,
Kalina, Bombay 29.

...Applicants/Defendants

VS

1. P.Chandrasekar
No.304, Krishna Building,
St.Antoony Road, Kalena,
Bombay 98

2. R.Jagathi
Green Gardens, 388/6,
'L' Blcok, Annanagar,
Chennai-102.

3. M.Jamuna
Retreat Building, 119,
G.N.Chetty Road, 3rd Floor,
Flat No.3B, T.Nagar,
Chennai 17.

...Respondents/Plaintiffs

This Application praying that this Hon'ble Court
be pleased to grant leave to produce the documents of the
defendants set out in the schedule hereunder as evidence
before this Hon'ble Court.

This Application coming on this day before this
court for hearing in the the court made the following order:

The suit has been filed by the
respondents/plaintiffs seeking a decree and judgment
alloting 1/6th share in the suit schedule property by metes
and bounds to each of the plaintiffs as well as a
declaration that settlement deed dated 23.01.2007 bearing
Document No.14 of 2007 registered before the Sub-Registrar
T.Nagar is null and void and for costs of the suit.

2. Issues have been framed and the suit has been
referred to trial before Additional Master IV. Pending

trial, the first defendant, being the mother of the plaintiffs and defendants 2 and 3 passed away on 24.12.2013.

3. The present application has been filed by defendants 2 and 3 in suit, seeking leave of this Court to produce various documents as described herein as evidence.

4. The documents in respect of which leave is sought are:-

S.No.	Date	Particulars	Details
1	19.05.1952	Agreement of sale in favour of chokkammal	Original
2	25.07.1962	Sale deed executed by K.R.Srinivasan Iyengar in favour of Chokkammal	Original
3	12.12.1964	Extract from Town Survey Land Register	Original
4	16.06.1970	Certificate of Registration of Palani Achari as goldsmith	Copy
5	1996	Form - 5 of Madras Urban Land Tax Act, 1966	Original
6	1973	T.Nagar Co-operative bank Pass Book issued to Chokkammal	Copy
7	1977-86	T.Nagar Co.op Bank Pass Book issued to Chokkammal.	Original
8	1989-1993	Pass Book of Chokkammal of Bank of Baroda	Original
9	1982/83	Income Tax Assessment of P.Chokkammal.	Copy
10	01.10.1986	Will executed by Palani Achari	Copy
11	21.03.1987	Property valuation report of suit property.	Original
12	01.06.1990	Death certificate of Palani Achari	Original

S.No.	Date	Particulars	Details
13	2002- 2006	Bank of Baroda Pass Book of P.Chokkammal	Original
14	23.01.20 07	Settlement deed executed by Chokkammal in favour of P.Ramesh	Original
15	08.03.20 07	Order name transfer in favour of P.Ramesh	Original
16	25.06.20 10	Patta issued to P.Ramesh	Original
17	2010- 2018	Property Tax issued to the P.Ramesh	Original
18	2015- 2016	Chennai Metro Water and Sewerage card issued to Ramesh	Original

5. The sole justification for the non-filing of the documents along with the written statement as required in terms of Order VIII Rule 1 of the Civil Procedure Code (CPC) is that the applicants are themselves based in Bombay whereas the documents were spread over between Chennai and Bombay.

6. A counter has been filed by the third plaintiff/third respondent, objecting to the relief sought for in the application. Reliance is placed upon the provisions of Rule 1(A) of Order VII specifically sub-rule (2) thereof, that casts a duty upon the applicants seeking the relief now sought for, to specifically state in whose possession or power the documents sought to be filed were found. In the present case, there is no averment either in the written statement or in the application to indicate in whose possession or power the documents were, or were found.

7. The respondent also points out that the present documents do not find reference in the written statement:

<https://hcservices.ecourts.gov.in/hcservices/>

It is argued that the application is wholly belated seeing as it has been filed after the plaintiffs' evidence has

been closed. Further document no. 10 is an unprobated will and cannot be sought to be marked as a document unless proven.

8. It is also pointed out that no application has been filed seeking condonation of the period that has elapsed between the filing of the written statement and the filing of the present application. Various contentions have been raised touching upon the merits of the matter to which I refrain from advertng.

9. A series of decisions of learned Single Judges of this Court to the effect that delay in the production of the documents has to be justified by the applicant have been relied upon by the respondents. (Orders dated 03.01.2018 in C.R.P.(PD) No.706 of 2015, 03.01.2018 in C.R.P.(PD) No.696 of 2015 and 28.11.2016 in C.R.P.(PD) No.2459 of 2012).

10. In reply, learned counsel for the applicant, with respect to the specific objection to the unprobated will assures the court that the intention of producing the will was only to rely upon the same as a collateral document and nothing further.

11. Heard Mr. Shanmuga Kani, learned counsel for the applicants and Mr. Vijayaragavan learned counsel for the defendants.

12. The provisions of order VII Rule 1(A) state as follows:

R.1A. 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, 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)

13. Rule 1(A) of Order VIII thus casts a duty upon the defendant to produce documents along with the written statement to be filed within thirty (30) days from receipt of suit summons. Sub-rule (2) specifically requires a statement by the defendant as to in whose possession or power the documents sought to be produced are, or were found. Sub-rule (3) places an embargo upon the production of a document as evidence, that has not been filed in terms of Rule 1(A) (1), except with the leave of the Court.

14. It is not the case of the present applicants that the documents sought to be produced were in their possession/power. The averment is to the effect that the documents had to be collated from various sources, to quote the applicants 'in Chennai and Bombay'. However, several of the documents enumerated in the list of documents,

specifically documents at sl.Nos.15 to 18 are documents that have been issued in favour of D3. There is thus no reason whatsoever as to why the documents, which are not denied to be in possession of D3, could not have been produced in time, along with the written statement.

15. The mandate cast upon the applicants by virtue of Order VII Rule 1(A) sub-rule 2 has, in my view, not been complied with.

16. The application is blissfully silent in regard to the delay that has been occasioned in seeking leave to produce the documents and in quantifying or seeking a condonation of the same. The provisions of Order VIII Rule 1 require the defendant to present a written statement within 30 days from the date of service of summons on him and the provisions of Order VIII Rule and I A (1) require all documents relied upon to be produced along with the written statement. Belated production of documents in terms of Rule 1A (3) of Order VIII thus necessarily calls for the quantification of the delay and a justification for the same. In the present case, this has not been done. The applicants in 2018, simply seek the leave of the Court to produce documents that ought to have accompanied the written statement filed as early as on 19.06.2012. This cannot be granted for the mere asking.

17. Upon a perusal of the documents sought to be filed now, it is noticed that some of the documents have already been marked, either through the plaintiffs' or defendants' witness in the course of trial thus far. They are, sale deed at serial no.2, certificate at serial No.4, bank pass book at serial no.6, income tax assessment order at serial no.9 and settlement deed at serial no.14. My consideration in the present application is thus limited to the remaining documents, being documents at sl.Nos.1,3,5,7,8,10,11,12,13, and 15 to 18.

18. I may state at this juncture that the written

statement filed by D2 has been adopted by D3 and there is no explanation or reference to the aforesaid documents in the written statements filed by either of the defendants.

19. The provisions of Rule 1A of Order VIII have been inserted in the Civil Procedure Code by the Amendment Act 2002 with effect from 1.7.2002. The notes on clauses in the Bill introducing the Amendment states thus:

'Order VIII of the Code provides for written statement and set-off. Clause 18 seeks to substitute rule 1 of Order VIII to provide a fixed time-frame within which pleadings are to be completed. The new provisions required the defendant to present a written statement within thirty days from the date of service of summons on him. Clause 18 inserts rule 1A to make it a duty of defendant to produce documents upon which relief is claimed or relied upon by him. Rule 1A requires the defendant to produce documents in his possession in the court and deliver the document or a copy thereof when the written statement is presented by him. Rule 1A further requires in case a document or copy thereof is not filed with the written statement, it shall not be allowed to be received in evidence on behalf of defendant at the hearing of the suit.'

20. The purpose of the amendment is thus evidently to fix a specific time frame within which pleadings are to be completed. Any deviation from the said time frame will have to be justified and the provision itself strictly construed strictly. The grant of extended time to produce documents in terms of Rule 1A requires the satisfaction of

twin conditions (i) a statement as to in whose possession or power the documents were or were found and (ii) an explanation for the delay in entering such documents in the suit proceedings. The present application is silent as to both requirements.

21. In the aforesaid circumstances, the application is dismissed.

22. Trial was ongoing before Additional Master IV that stood interrupted by virtue of the filing of the present application. Trial shall resume forthwith with the parties appearing before Learned Additional Master IV on 19.09.2018. The proceedings are directed to be completed within a period of four months from the said date.

Sd./- A.S.M.J

11.09.2018

//Certified to be true copy//

Dated at Madras this the day of 2018.

KY/19.09.2018

COURT OFFICER (O.S.)

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