



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

WEB COPY

C.R.P. (PD) (MD) No.206 of 2018
and C.M.P. (MD) Nos.897 & 2231 of 2018

1. K.Anandharaman
2. K.Sooriyaramalingam
3. V.Palanivinayagam
4. V.Anandaraman
5. V.Karthikeyan
6. K.Meenatchisundaram ... Petitioners/Petitioners/Plaintiffs

-vs-

1. S.Sankaran
2. S.Arasappan ... Respondents/Respondents/Defendants

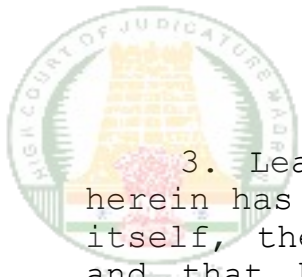
Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order dated 30.11.2017 made in I.A.No.213 of 2017 in O.S.No.21 of 2014 on the file of the IV Additional District Court, Tirunelveli by allowing the same and to allow the present C.R.P.

For Petitioners : Mr.S.P.Maharajan
For Respondents : Mr.H.Arumugam

ORDER

The revision petitioners are the plaintiffs in O.S.No.21 of 2014 on the file of the IV Additional District Court, Tirunelveli and in the suit, the plaintiffs / revision petitioners herein sought for declaration along with various other reliefs. During pendency of the suit, the plaintiffs had an application in I.A.No.213 of 2017, seeking to reopen the case for the purpose of examination of additional witnesses and the said application was dismissed by the Trial Court, stating that the application was filed only to drag on the proceedings. Challenging the said order, the petitioners are before this Court.

2. It is the case of the revision petitioners that the defendants had filed bogus sale deed in respect of their stand that the suit schedule property belongs to them and in order to prove that the sale deed relied upon by them is not a genuine one, it is absolutely necessary to examine additional evidences on their side. According to the petitioners/plaintiffs, after completion of their side evidence, the defendants started contesting the case on the basis of the unregistered fake document dated 25.12.194. Unless further witnesses are examined, much prejudice would be caused to them and therefore, it is prayed that the order of the Trial Court needs interference by this Court.



3. Learned counsel appearing for the defendants / respondents herein has contended that in the written statement filed in the suit itself, the factum of the said document had been vividly explained and that being the case, the plaintiffs attempted to create an impression as if the document has been introduced recently. It is further contended that the examination of witnesses on both sides had been completed as early as 13.07.2017 and subsequently, despite the suit being adjourned for 11 times for argument, instead of commencing the argument, the plaintiffs have filed the present application for examination of additional witnesses, which is nothing but an abuse of process of law and therefore, it is stated that there is no necessity to reopen the case for examination of additional witnesses.

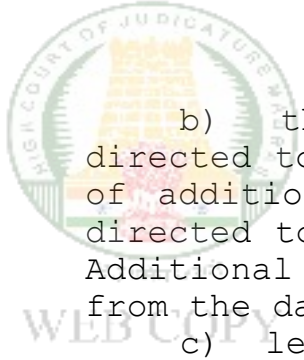
4. Heard the learned counsel on either side and perused the material documents available on record.

5. From the perusal of the averments set out in the petition, it is seen that the petitioners have invoked the provisions of Section 151 C.P.C. in respect of the present relief and the main contention of the plaintiffs is that the document dated 25.12.1974 relied upon by the defendants is a bogus one and to establish the fact to that effect, he wanted to examine further witnesses. It is also seen from the order of the Trial Court that the defendants' side evidence was closed on 05.07.2017 and no objection was raised by the plaintiffs, when the existence of such document was found mentioned in the written statement filed by them. However, it is the case of the plaintiffs that the defendants have started contesting the case on the basis of the said unregistered document / sale deed alone, which was later on found to be a bogus one, immediately on coming to know of which, the plaintiffs had filed the application for reopening the case for the purpose of examination further witnesses to substantiate their contention.

6. There is force in the contention raised by the plaintiffs, inasmuch as though the burden of proof is only on the side of the defendants to prove the genuineness of the document, if any finding is rendered based on the said document, it would certainly affect the case of even both sides and therefore, there is nothing wrong in examining additional witnesses with regard to the genuineness of the document even at the threshold and thereafter, to proceed with the argument. Taking into account the overall circumstance of the case, this Court is of the view that the order of the Trial Court has no legs to stand and is liable to be set aside.

7. In the result,

a) this civil revision petition is allowed and the order dated 30.11.2017 made in I.A.No.213 of 2017 in O.S.No.21 of 2014 by the learned IV Additional District Judge, Tirunelveli, is hereby set aside;



b) the learned IV Additional District Judge, Tirunelveli is directed to reopen the case for the purpose of production of a list of additional witness and on such reopening, the petitioners are directed to furnish the list of further witnesses to the learned IV Additional District Judge, Tirunelveli within a period of one week from the date of receipt of a copy of this order;

c) learned IV Additional District Judge, Tirunelveli, on receipt of the list, is directed to permit the parties to examine and cross examine the additional witnesses and complete the said exercise within three weeks thereafter;

d) learned IV Additional District Judge, Tirunelveli is also directed to dispose of the suit in O.S.No.21 of 2014 within a period of two months from the date of completion of examination of additional witnesses by conducting the trial of the suit on day-to-day basis without giving any unnecessary adjournments to either parties and the parties shall also extend their full cooperation for disposal of the suit in time as indicated above.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar(CS-II)

To:

The IV Additional District Judge,
Tirunelveli.

Copy To:

The Record Keeper, VR Section,
Madurai Bench of Madras High Court,
Madurai. (2copies)

+1CC to Mr.S.P.Maharajan, Advocate, SR.No.73318
+1CC to Mr.H.Arumugam, Advocate, SR.No.73887

C.R.P.(PD)(MD) No.206 of 2018
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