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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.04.2018

DELIVERED ON : 13.11.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.482 of 2018

and

CMP(MD)No.2131 of 2018

1.K.Chellapandi
2.G.Sriengammal

.. Petitioners

vs

P.Alagarsamy

.. Respondent

Civil Revision Petition filed under Article 227 of Constitution of India against the order dated 04.01.2018 passed in I.A.No.464 of 2017 in O.S.No.470 of 2008 on the file of the District Munsif Court, Vadipatty.

For Petitioners : Mr.C.S.Ravichandran

For Respondent : Mr.C.Vakeeswaran

ORDER

This revision has been filed by the petitioners against the order dated 04.1.2018 made in I.A.No.464 of 2017 in O.S.No.470 of 2008 on the file of the learned District Munsif Court, Vadipatty.

2. The petitioners are defendants and the respondent is the plaintiff in the suit. The plaintiff had filed the suit for permanent injunction restraining the 1st defendant, his men and agents from disturbing the plaintiff's peaceful possession and enjoyment of the suit property except under due process of law.

3. The plaintiff had filed I.A.No.464 of 2017 under Order 7, Rule 14(3) CPC seeking to receive the documents mentioned in the petition as exhibits on the side of the plaintiff alleging that now only he had handed over the documents to his advocate. It was stated that in order to establish and substantiate the case of the plaintiff, the documents have to be received in evidence on the side of the plaintiff. If the same were not received, the plaintiff would be put to irreparable loss and damage.



4. Resisting the petition, the defendants have filed counter stating that the documents which were seeking to receive in evidence were all created by the plaintiff during pendency of the suit and therefore, the said documents were lis pendent. The alleged documents were legally inadmissible in evidence and prayed for dismissal of the petition.

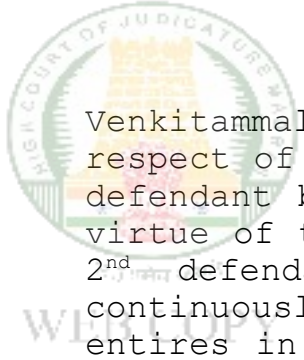
5. Upon consideration of the rival submissions, the trial Court allowed the petition subject to proof and admissibility of documents. Aggrieved by the same, the defendants have filed this revision.

6. Challenging the order of the trial Court, the learned counsel for the petitioners/defendants argued that the trial Court miserably failed to see that the documents mentioned in the petition were no way help to decide the suit and those documents were generated during the pendency of the suit. The learned counsel further submitted that the trial Court failed to apply its mind to find out those revenue records were being created by the respondent on the strength of fraudulent ex parte order obtained by him from the Record Officer / Tahsildar, Vadipatti in T.R.No.9 of 1996, dated 17.2.1997 to register his name as cultivating tenant against his mother Venkatammal. In fact, at that time, Venkatammal was not the owner of the suit property.

7. The learned counsel next submitted that as against the order passed in T.R.No.9 of 1996, the 2nd defendant filed an appeal being A.P.No.23 of 2004 and the said appeal was allowed by the Revenue Divisional Officer, Madurai and remanded the matter back to the Tahsildar for fresh disposal. The Tahsildar, has taken the tenancy application and re-numbered as T.R.No.5 of 2006 and the same is still pending. The learned counsel then contended that the trial Court without properly applying its mind allowed I.A.No.464 of 2017 and received the documents which were obtained during pendency of the suit. The reason assigned by the trial Court in allowing the petition was not legal and convincing and prayed for setting aside the order of the trial Court.

8. Reiterating the order of the trial Court, the learned counsel for the respondent submitted that on going through the additional documents produced by the respondent, the trial Court has rightly allowed the petition and there is no need to interfere with the order of the trial Court.

9. The plaintiff pleaded that the suit property originally belonged to Venkitammal, the mother of the plaintiff and the 2nd defendant and the suit property was under the personal cultivation of the plaintiff for the past 35 years. The 2nd defendant is the sister of the plaintiff. Out of compulsion, Venkitammal settled part of the suit property in favour of the 2nd defendant through a registered settlement deed dated 26.8.1985. Subsequently,



Venkitammal executed sale deed in favour of the 2nd defendant in respect of the remaining extent of the suit property. Thus, the 2nd defendant became the absolute owner of the entire suit property by virtue of the settlement and sale deed and both the Venkitammal and 2nd defendant permitted the plaintiff to cultivate the land continuously without any interference. All the revenue records and entires in the adangal and taxes were in the name of the plaintiff as cultivating tenant. Subsequently, the 2nd defendant sold the suit property in favour of the 1st defendant and the 1st defendant who was a man of muscle came to the suit property and threatened the plaintiff not to cultivate the suit property and to hand over possession of the suit property. According to the plaintiff, since his rights were being protected under the Tamil Nadu Cultivating Tenants Protection Act, he had filed the suit for permanent injunction restraining the 1st defendant from disturbing his possession of the suit property except under due process of law.

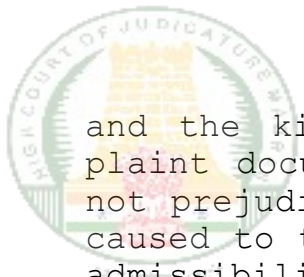
10. Resisting the suit, the 1st defendant filed the written statement stating that the plaintiff was not a cultivating tenant and he was not in possession of the suit property and therefore, he was not entitled to the protection of the Tamil Nadu Cultivating Tenants Protection Act. It was also stated in the written statement that there was no entry in the adangal to show that paddy was raised and that the plaintiff had filed the suit without actual possession of the suit property.

11. I heard Mr.C.S.Ravichandran, learned counsel for the petitioners and Mr.C.Vakeeswaran, learned counsel for the respondent and perused the entire materials available on record.

12. Admittedly, the trial has not begun. When the suit was listed for trial, the plaintiff has filed the petition to receive additional documents. The documents to be received are kist receipts and adangal extracts from the fasli 1419 to 1423. On a perusal of those documents, it is seen that they were obtained in 2015 during the pendency of the suit.

13. The provisions contained in Order 7, Rule 14 of CPC, in this regard are very clear which provide that if a document which ought to be produced by the plaintiff at the time of presentation of the plaint or entered in the list as a document to be annexed to the plaint, is not produced or entered in the list accordingly, then without leave of the Court, such documents cannot be received in evidence on behalf of the plaintiff.

14. Admittedly, in this case, the petition seeking leave of the Court to receive documents filed along with the petition by the plaintiff after filing of the written statement. The documents which were to be received are kist receipts and adangal extracts from fasli 1419 to 1423. In the plaint document filed under Order 7, Rule 14 of CPC, the plaintiff has filed adangal extracts from fasli 1406 to 1417 apart from kist receipts. The adangal extracts



and the kist receipts to be received are in continuation of the plaint documents. Therefore, mere receipt of those documents will not prejudice the defendants in any manner and no hardship would be caused to them if they were received, however, subject to proof and admissibility.

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15. The plaintiff has explained the reason for non-production of the documents in paragraph 2, which read as under:

"2. I respectfully submit that the suit is posted today for trial. Now only I have given some important documents to my Advocate. In order to establish and substantiate on my case the above said documents have to be received on my side in the interest of justice. If it is not received, I will be put to irreparable and incalculable loss."

16. In view of the explanation as above, this Court is of the view that there is no embargo in granting leave to receive those documents, which the trial Court has rightly done. The trial Court ordered to receive the documents subject to proof and admissibility only. There was no valid ground to interfere with the order of the trial Court and the revision is liable to be dismissed.

17. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. Since suit is of the year 2008, the trial Court is directed to dispose of the suit within a period of two months from the date of receipt of a copy of this order. Both the plaintiff and the defendants are directed to co-operate the trial Court for speedy disposal of the suit.

Sd/
Assistant Registrar(AD-I)

/True copy/

Sub Assistant Registrar(CS-III)

To

The District Munsif,
Vadipatty.

+1cc to Mr.C.VAKEESWARAN, Advocate, SR.No. 95159

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VSV
KK/PM/SAR-3/18.12.2018/4P-3C