



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.04.2018

DELIVERED ON : 24.08.2018

CORAM

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

C.R.P. (MD) (PD) No.807 of 2018

and

CMP (MD) No.3571 of 2018

S.Jeyaram Raja

... Petitioner

Vs

1.P.Naina Mohammed Rowther (died)

2.A.Kulandai Chettiar (died)

3.Mohammed Mariam (died)

4.Jeenath Bibi (died)

5.N.Kannazhagan

6.M.Abdul Wahab (died)

7.M.A.Sikkandar

8.Najuma Rani

9.M.A.Tajudeen

10.Suriya Begum

11.Afroze Banu

12.M.A.Honest Mohideen

13.M.A.Elizebeth Rani

(RR 1 to 4, and 6 given up

since they are died (vide in EB)

.. Respondents

Civil Revision Petitions filed under Article 227 of Constitution of India against the order dated 02.2.2018 passed in I.A.No.899 of 2017 in O.S.No.75 of 2015 on the file of the Principal District Munsif Court, Madurai.

For Petitioner

: Mr.V.Nagendran

ORDER

This revision is directed against the order of the learned Principal District Munsif, Madurai dated 02.02.2018 passed in I.A.No.899 of 2017 in O.S.No.75 of 2015, dismissing the petition filed by the petitioner for stay of the suit proceedings.

2. The petitioner herein is the plaintiff in the suit and he filed the suit for specific performance directing the respondents to execute and register a sale deed in favour of him in terms of the sale agreement dated 29.07.1987 qua suit property after receiving the balance sale consideration of Rs.55,000/- from the plaintiff and failure to do such a sale deed, the Court may execute the sale deed and for costs. Resisting the suit, the respondents herein have filed the written statement.

3. I heard Mr.V.Nagendran, learned counsel for the petitioner. I have also perused the material papers available on record.

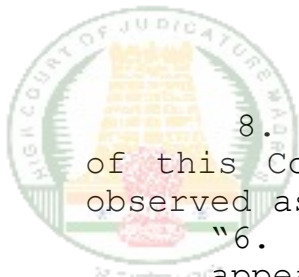


4. The petitioner has filed I.A.No.899 of 2017 seeking to stay of the suit till the misplaced documents were restored to the case bundle. By the impugned order, the learned Principal District Munsif, Madurai stated that the suit was originally filed before the learned I Additional Subordinate Judge, Madurai and later, the same was transferred to the file of the learned Principal District Munsif Court, Madurai. It was also stated that no documents have been misplaced in the learned Principal District Munsif Court, Madurai. In the impugned order, it has further been stated that in the Index prepared before the Sub Court, the sale agreement was complied in C.A.No.13812 on 12.10.2007. The details of entire documents which according to the petitioner were misplaced have not been given in the petition.

5. At this juncture, it is apposite to mention that once on pecuniary jurisdiction a suit is transferred from the file of one Court to another, it is the bounden duty of the receiving Court to check the bundle thoroughly and receive it. If any of the documents and/or material papers were not available, then the receiving Court would immediately address the transferring Court about the missing of the papers and/or documents. Even the receiving Court had right to return the bundle to the parent Court. Admittedly, in the case on hand, the learned Principal District Munsif Court, Madurai has not addressed any such letter to the transferring Court. In its order, the learned Principal District Munsif, Madurai, simply stated that the sale agreement was complied in C.A.No.13812 on 12.10.2007. The learned Principal District Munsif, Madurai simply thrown out the burden by saying that no documents have been misplaced before his Court. Further, the learned Principal District Munsif Court, Madurai had not taken any action to trace out the misplaced documents and restore the same to its original position.

6. Since the documents misplaced were the suit documents and the sale agreement is the base document to file the suit, without which, the petitioner cannot proceed with the suit and it is also not possible for the trial Court to get along the trial without marking the suit sale agreement.

7. On a perusal of the typed of set of documents, I find that earlier, the petitioner has field W.P.(MD) No.2511 of 2015 before this Court seeking a writ of mandamus directing the respondents therein i.e., the Registrar (Vigilance), the Registrar (Judicial) of this Court and the Principal District Judge, Madurai to tract out the bundle and to restore the suit in O.S.No.302 of 1988 pending on the file of the learned I Additional Sub Court, Madurai within the time frame that may be fixed by this Court. The suit being O.S.No.302 of 1988 was latter transferred to the file of the learned Principal District Munsif Court, Madurai and numbered as O.S.No.75



8. By an order dated 25.02.2015, the Hon'ble Division Bench of this Court, while dismissing the writ petition as infructuous, observed as under:

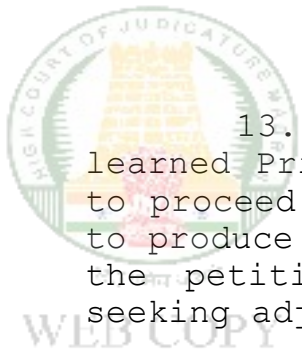
"6. It is admitted by the learned standing counsel appearing for the respondents that due to change of pecuniary jurisdiction, the suit in O.S.No.302 of 1988 was sent to the Principal District Court, Madurai as per Act 1 of 2004 and numbered as O.S.No.75 of 2015 and there was also a direction to the Principal District Munsif, Madurai to dispose of the suit at an early date. In support of his contention, the learned standing counsel produced a copy of the letter in D.No.2544 dated 13.02.2015 addressed by the Principal District Judge, Madurai to the Registrar (Administration), Madurai Bench of Madras High Court."

9. Thus, from the order of the Hon'ble Division Bench, it is seen that the entire suit bundle in O.S.No.302 of 1988 pending on the file of learned I Additional Sub-Court, Madurai was transferred to the file of the learned Principal District Munsif Court, Madurai and re-numbered as O.S.No.75 of 2015. Only if the bundle is in tact, the receiving Court will assign the re-number. In the case on hand, nothing on record to show that without the misplaced documents, the learned Principal District Munsif Court, Madurai had numbered the suit.

10. In his affidavit filed in support of I.A.No.899 of 2017, the petitioner has stated that he had lodged a complaint dated 17.8.2017 before the learned Principal District Judge, Madurai for an enquiry about the missing documents and according to the petitioner, till date the learned Principal District Judge, Madurai has not conducted any enquiry on his complaint.

11. According to the respondents, the petitioner has failed to give the particulars of document misplaced in his petition. On a reading of the affidavit averments, it is seen that the petitioner has categorically stated that the agreement dated 29.07.1987 and the pocket note book and also other documents were misplaced. In its order, the learned Principal District Munsif has stated that the details of entire documents, which according to the petitioner misplaced were not given in the petition. The aforesaid observation of the learned Principal District Munsif is apparently not correct for the reason that the petitioner has clearly stated that the suit agreement and the pocket note which were filed along with the suit were misplaced.

12. The learned Principal District Munsif, Madurai, in its order, further observed that because of missing of some documents as alleged by the petitioner, the suit proceedings need not be stayed as there was a direction to the learned Principal District Munsif, to dispose of the suit expeditiously.



13. On a reading of the impugned order, it is seen that the learned Principal District Munsif, Madurai permitted the petitioner to proceed with the case with available documents and also directed to produce copies of documents, if any, available in his hands. But the petitioner was not interested in commencing the trial and seeking adjournments.

14. At this juncture, it is to be noted that this Court as well as the Hon'ble Apex Court in a catena of judgments held that photo copy of the documents cannot be marked as exhibits though the other side has not objected for marking. Since the suit agreement is the base document and without which the suit cannot be proceeded further, it would be appropriate to stay the suit proceedings till the documents were traced out.

15. In the result:

- (i) The Civil Revision Petition is allowed and the order dated 02.02.2018 passed in I.A.No.899 of 2017 in O.S.No.75 of 2015 on the file of the learned Principal District Munsif Court, Madurai is set aside. No costs. Consequently, CMP (MD) No.3571 of 2018 is closed.
- (ii) The learned Principal District Munsif, Madurai is directed to trace out the suit agreement and the other misplaced documents, which were annexed along with the plaint within a period of one month from the date of receipt of a copy of this order. Till such time suit proceedings in O.S.No.75 of 2015 on the file of the learned Principal District Munsif Court, Madurai are stayed.
- (iii) The learned I Additional Sub Court, Madurai is directed to verify its records that the entire bundle in O.S.No.302 of 1988 was transmitted to the file of the learned Principal District Munsif, Madurai, including the documents which were filed along with the suit. If any papers and/or documents in relation to the suit in O.S.No.302 of 1988 were available with them, the same shall immediately be transmitted to the file of the learned Principal District Munsif Court, Madurai.
- (iv) The learned Principal District Judge, Madurai is directed to look into the complaint said to have been lodged by the petitioner dated 17.08.2017 and inform this Court about the steps taken on it.
- (v) The learned Principal District Judge, Madurai is directed to conduct an enquiry in this matter about the missing of documents in the suit whether the documents were misplaced in learned I Additional Sub Court, Madurai or in the learned Principal District Munsif Court, Madurai.
- (vi) The learned Principal District Judge, Madurai is directed to initiate action against the person/s involved in misplacing the documents.



WEB COPY

(vii) Considering the fact that the suit is pending from 1988, in case, if the suit documents were not traceable within the period stated supra, in the special circumstances of the case, the petitioner is permitted to file the photo copy of suit documents alone and the trial Court is directed to mark the same with an endorsement that originals were misplaced. Later, if the documents were traced out, the same can be substituted with due endorsement.

(viii) The learned I Additional Sub Court, Madurai and the learned Principal District Munsif Court, Madurai are directed to send a report about the action taken for tracing out the misplaced documents to the learned Principal District Judge, Madurai, who in turn shall send a report to this Court for further action.

Sd/-

Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Principal District Judge, Madurai
2. The I Additional Sub Judge, Madurai - forthwith.
3. The Principal District Munsif, Madurai.

Copy To:

1. The Record Keeper, VR Section, Madurai Bench of Madras High Court, Madurai. **(2 Copies)**
2. The Registrar (Judicial), Madurai Bench of Madras High Court, Madurai.
3. The Posting Clerk, Judicial Department, Madurai Bench of Madras High Court, Madurai.

C.R.P. (MD) (PD) No.807 of 2018 and
CMP (MD) No.3571 of 2018

24.08.2018

VSV

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

ES/JM/SKN/RSR/SAR 4/28.08.2018/5P/8C