



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.06.2018
CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

CRP(MD) (PD) Nos.1805 to 1807 of 2013

Raju ... Petitioner in all CRP

vs.

1.Sulojanabai (died) ... 1st Respondent

2.Lilly Thangam ... 2nd Respondent

3.K.Perumal ... 3rd Respondent

4.S.Ramesh ... 4th Respondents
(in all CRP's)

(R4 has been impleaded vide order
dated 30.08.2017 in C.M.P.(MD) Nos.
5833 to 5838 of 2017 in C.R.P.(MD) Nos.
1805 to 1807 of 2013)

Common Prayer:- Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.Nos.235, 236 and 237 of 2013 in O.S.No.265 of 2010, on the file of the I Additional Subordinate Judge, Nagercoil, dated 17.09.2013.

For Petitioner
in all CRPs : Mr.M.P.Senthil

For R2 & R3
in all CRPs : No appearance

For R4 in all CRPs : Mr.N.GA.Natraj

COMMON ORDER

CRP.(MD) Nos.1805 to 1807 of 2013 have been filed by the seventh defendant in the suit as against the order passed in I.A.Nos.235 to 237 of 2013 in O.S.No.265 of 2010 on the file of the learned First Additional Subordinate Judge, Nagercoil.

2.The brief facts that are necessary for the purpose of disposal of these Civil Revision Petitions are as follows:

2.1.The first respondent in these civil revision petitions filed a suit in O.S.No.265 of 2010 on the file of the learned First Additional Subordinate Judge, Nagercoil, for partition of 1/4 share in all the plaint schedule properties and for other consequential reliefs.



2.2.The suit was contested by all the defendants and written statement was filed by the defendants 4 to 7 in the suit in O.S.No.265 of 2010. The defendants 4 to 7 have also filed additional written statement refuting all the allegations made in the plaint.

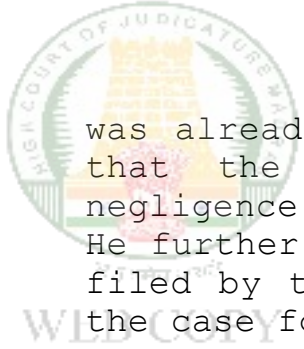
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2.3.The plaintiff filed a petition to call for a document and to reopen the case of plaintiff for further evidence on behalf of the plaintiff in I.A.Nos.94 and 95 of 2013. Thereafter, the seventh defendant filed an application in I.A.No.235 of 2013, to re-open the case for adducing further evidence and I.A.No.236 of 2013 to re-call P.W.2. The seventh defendant further filed another application in I.A.No.237 of 2013 to direct the plaintiff to produce the original document in Document No.2545/1962 registered on the file of the Sub Registrar, Nagrcoil, which is in the custody of the plaintiff. All the above three applications, filed by the seventh defendant, were dismissed by the Trial Court.

3.The Trial Court, after taking note of the fact that the trial was commenced on 03.02.2013, found that the disposal of the suit was delayed due to the filing of various applications. The fact that the matter was posted for arguments on 21.08.2013, was also recorded by the Trial Court. Since the production of original document was not raised as an issue and no explanation has been offered for raising the same belatedly, the Trial Court was of the view that the question whether the non production of original Ex.B.1., is vital or not, can be agitated during the arguments in the main suit and that the application for production of document has no merit. Since P.W.2. was already cross-examined by the second defendant's counsel on 14.08.2013, the Lower Court observed that the question of further cross-examination does not arise and that the petitions filed by the seventh defendant have no merit. Aggrieved over the common order passed by the learned First Additional Sub Judge, Nagercoil, the above Civil Revision Petitions have been filed.

4.The learned counsel appearing for the petitioner submitted that at the time of cross-examination, he was away and that therefore, he could not give instructions to the counsel, for cross examining P.W.2. The learned counsel for the petitioner further submitted that the cross-examination of P.W.2., by other defendants in the suit has no relevance in this case and that an opportunity should be given to the revision petitioner to cross-examine P.W.2. The learned counsel for the petitioner further pointed out that no prejudice will be caused to the plaintiff or any one by allowing the petitioner to cross-examine P.W.2.

5.The learned counsel for the fourth respondent, however, submitted that the matter need not be re-opened and the petitioner



was already given sufficient opportunity. It is further submitted that the revision petitioner cannot take advantage of the negligence for the purpose of causing hardship to the plaintiff. He further submitted that there is no *bona fide* in the application filed by the seventh defendant, to re-call P.W.2, and to re-open the case for the purpose of cross-examining P.W.2.

6.The application filed in I.A.No.237 of 2013 for production of original document has been dismissed by the lower Court, only on the ground that the document Ex.B.1., was marked on 06.12.2010 and that the production of original of the said document cannot be sought for after three years, as no explanation has been offered for not filing the application at the earliest point of time.

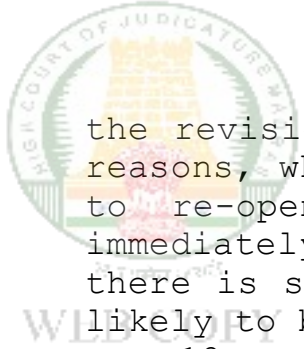
7.Going by the admitted facts, the Trial Court dealing with the application for production of original document need not go into the merits of the case. Admittedly, the first page of Ex-B1 document, which is marked is not legible.

8.The production of original document was not opposed on merits, but on the ground that the document is not available with the plaintiff. However, the learned Judge has not passed the order on the ground that the plaintiff cannot be called upon to produce the same as the plaintiff does not admit the possession of the document. However, the Lower Court dismissed the application, on the ground that it is not necessary.

9.Having regard to the nature of case filed by either side and the issues that may arise for consideration, this Court is able to see some relevance to ask for the production of original of document Ex.B.1. In case, the plaintiff satisfies the Court as to the non-existence of the document, the Lower Court may dismiss the application, after rendering the finding as to be non-availability from the person, from whom the production of document is sought for.

10.Hence, the order in I.A.No.237 of 2013 in O.S.No.265 of 2010 on the file of the learned First Additional Subordinate Judge, Nagercoil, is set aside and the matter is remitted back to the learned First Additional Subordinate Judge, Nagercoil, to consider the application afresh, on merits and in accordance with law, by taking into account that the original of the document in Ex.B.1., may be required to avoid a technical plea by any one later. Accordingly, CRP(MD) No.1807 of 2013 is allowed with the above terms.

11.Insofar as I.A.Nos.235 and 236 of 2013 in O.S.No.265 of 2010 on the file of the learned I Additional Subordinate Judge, Nagercoil, are concerned, as observed earlier, this Court is of the view that the revision petitioner should be given an opportunity to re-call P.W.2., for further cross-examination as



the revision petitioner has not availed this opportunity for some reasons, which cannot be ignored. Merely because, the application to re-open the case and to re-call P.W.2., was not filed immediately after the cross-examination was done by others and there is some delay, it cannot be taken that serious prejudice is likely to be caused to the plaintiff or any one in the suit.

12. Having regard to the well settled principle that adequate opportunity should be given to the parties and as the cross-examination of P.W.2., is relevant and failure of cross-examination P.W.2., is likely to cause some prejudice against the revision petitioner, this Court is inclined to set aside the order passed by the Lower Court in I.A.Nos.235 and 236 of 2013 in O.S.No.265 of 2010 on the file of the First Additional Subordinate Judge, Nagercoil and the same are accordingly, set aside. However, it is made clear that the cross examination of PW-2 need not be permitted to enlarge the scope of litigation and the reopening of the case is only for cross examination by revision petitioner.

13. As a result, the Civil Revision Petitions in CRP.(MD) (PD) Nos.1805 and 1806 of 2013 are allowed and the application filed by the petitioner in I.A.Nos.235 and 236 of 2013 in O.S.No.265 of 2013 on the file of the learned First Additional Subordinate Judge, Nagercoil, stand allowed.

14. In result, all the civil revision petitions are allowed in the above terms. No costs.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

The I Additional Subordinate Judge,
Nagercoil.

Copy to:

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

+ 1 cc TO Mr.M.P.Senthil , Advocate in SR No. 68694
+ 1 cc TO Mr.N.GA.Natraj , Advocate in SR No. 68557

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