



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.06.2018

CORAM

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD) Nos.1868 and 1869 of 2013
and
M.P. (MD) No.1 of 2013

Pauliah ... Petitioner/Defendant in both CRPs.,

vs

Ponnammal .. Respondent/Plaintiff in both CRPs.,

Common Prayer: Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 10.09.2013 passed in I.A.Nos.259 and 260 of 2013 in O.S.No.84 of 2011 on the file of the II Additional Sub-Court, Nagercoil.

For Petitioner
in both CRPs., : Mr.M.P.Senthil

For Respondent
in both CRPs., : Mr.V.Meenakshi Sundaram for
Mr.D.Nallathambi

COMMON ORDER

These civil revision petitions have been filed to set aside the fair and decreetal order dated 10.09.2013 passed in I.A.Nos.259 and 260 of 2013 in O.S.No.84 of 2011 on the file of the II Additional Sub-Court, Nagercoil.

2.The respondent herein filed a suit in O.S.No.84 of 2011 to set aside the sale deed dated 10.03.2010, executed by the plaintiff in favour of the defendant as null and void. It is stated in the plaint that the plaintiff was forced to sign the document and that the signature was obtained by fraud and misrepresentation. It is also stated that there was no consideration for the sale deed.

<https://hcservices.courts.gov.in/hcservices/>
3.The suit was contested by the defendant on various grounds. During the pendency of the suit, the defendant filed the



applications to re-open the case and to re-call P.W.1., for the purpose of further cross-examination to mark an additional document. This two applications filed in I.A.No.259 and 260 of 2013 in O.S.No.84 of 2011 on the file of the II Additional Sub-Court, Nagercoil, were dismissed by the trial Court and aggrieved by the same, the above civil revision petitions have been filed by the defendant.

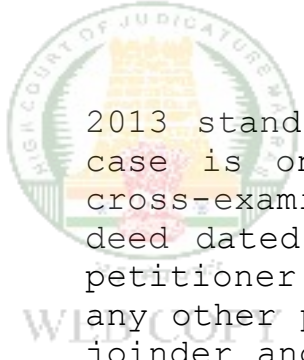
4.The learned counsel appearing for the petitioner states that the petitioner has come across a subsequent sale deed was executed by the plaintiff in favour of a third party. It is further stated that in the said sale deed, while describing the property conveyed by the plaintiff in favour of another party, the property sold to the petitioner has been referred to as the property of petitioner. Since this document is an important piece of evidence to prove the defendant's case in the suit, it is submitted that in the interest of justice permission should be given to the first defendant.

5.This Court is also convinced that the document, which is sought to be marked on the side of P.W.1., is relevant and important to decide the main issue in the suit. The trial Court, however, dismissed the applications filed by the defendant after observing that the petitioner has not stated how the document, which is sought to be marked through P.W.1., is relevant to the case. Since every person, who is having possession of the document should produce the document at the earliest point of time, the Trial Court further observed that the opportunity to produce the document at the earliest point of time was not availed by the petitioner.

6.Considering the fact that the defendant has taken number of adjournments for cross-examining P.W.1., and the evidence on defendant's side was closed long back, the lower Court found that there is no bona fide in the applications and the applications were dismissed by the lower Court.

7.Going by the facts and events, this Court is of the view that serious prejudice will be caused to the defendant in this case, if he is not permitted to mark the document or put further questions to the plaintiff's witnesses. It is to be noted that the suit was filed in the year 2001 and the applications have been filed after two years from the date of institution the suit. The case of the petitioner is that the document was not available with the petitioner earlier. Since the sale deed relied upon by the petitioner was executed by the plaintiff, the defendant cannot be expected to have knowledge about the same.

8.Having regard to the peculiar circumstances of this case, <https://hcservices.ecourts.gov.in/hcservices/> inclined to allow these civil revision petitions. As a result, these Civil Revision Petitions are allowed and the applications filed by the petitioner in I.A.Nos.259 and 260 of



2013 stand allowed. It is made clear that the re-opening of the case is only for the purpose of re-calling P.W.1., for further cross-examination with reference to the document namely, the sale deed dated 28.04.2011, and the scope of applications filed by the petitioner in I.A.Nos.259 and 260 of 2013 cannot be enlarged to any other purpose. It is also open to the plaintiff to file a re-joinder and let in further evidence. It shall also be confined to the document, namely, the sale deed dated 28.04.2011. No costs. consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

1.The II Additional Sub Judge,
Nagercoil.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to Mr.M.P.Senthil, Advocate, SR.No.70441.

+1cc to Mr.D.Nallathambi, Advocate, SR.No.70155.

C.R.P.(MD) Nos.1868 and 1869 of 2013

27.06.2018

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RAM/RSK/SAR 2/13.07.2018/3P/6C