

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (PD) No.1707 of 2012
and M.P.Nos.1 and 2 of 2012

1. Saraswathi
2. Selvakumar

.. Petitioners

Vs.

1. Subbathal (Deceased)
2. Rasappa Gounder
3. Palanathal
4. Kamalathal
5. Sornathal
6. Poovathal
7. Santhamani
8. Palanisamy
9. Selvaraj

.. Respondents

(RR6 to RR9 are Lrs of the deceased 1st respondent
vide order of this Court dated 28.03.2019 made in
M.P.No.2 of 2012 in CRP(PD) No.1707/2012 by NSKJ).

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decreetal Order dated 29.02.2012 passed by the learned District Munsif, Tiruppur in I.A.No.646 of 2010 in O.S.No.110 of 1997.

For Petitioner : Mr.N.Manoharan
for Mr.R.Sivaprakasam

For Respondents : R2 – Given up vide Court Order
dated 14.03.2019.
R6 and R7 – No appearance
R8 and R9 – No such Addressee

ORDER

Aggrieved over the order of trial court in allowing the Xerox copy of certain documents, the present revision is filed.

2. The brief facts leading to filing of the application is as follows:

(i). The plaintiff has filed the suit for partition for division of the properties in six equal shares. The plaintiff and defendants 1 to 4 are the sons and daughters of Ramasamy Gounder and the defendants 5 and 6 are the legal heirs of the 2nd son of the said Ramasamy Gounder.

(ii). During the pendency of the suit, an Interlocutory Application viz., I.A.No.646 of 2010 has been filed by the plaintiff to file additional

documents namely, the copies of the notice dated 19.05.1994 and reply notice said to have been sent by the defendants 5 and 6.

(iii). It is the specific contention of the plaintiff in the above application that those documents are received by them as plaint documents in O.S.No.362 of 1994. Therefore, those documents are necessary in the above application and opposed by the respondent on the ground that there was no documents and notice were sent by them and originals have not been accounted. Hence, those documents cannot be received in evidence. The trial Court by its order dated 29.02.2012 has allowed the application.

3. Heard the learned counsel appearing for the revision petitioners and there is no representation for the respondents, despite the matter has been passed over in the morning till 3 p.m.

4. The learned counsel appearing for the revision petitioner contended that the defendants sent a notice to the fourth defendant before filing the suit in O.S.No.362 of 1994 which is renumbered as O.S.No.341 of 1996. It is the case of the plaintiff that the defendants

has sent a reply for the notice sent by the plaintiff in O.S.No.362 of 1994. Hence, those documents are necessarily to be filed in this case.

5. The learned counsel appearing for the revision petitioner contended that absolutely, there is no evidence to show that reply notice was sent by them and the original documents had not seen the light of the day, the loss of originals has not been accounted. The copies ought marked did not contains any seal of the Court to contend that the same was received by some one else, for that, there is no acknowledgement available on record to show that the reply was sent and received. The document is only a copy which appears to be prepared recently. Hence, submitted that unless loss of original documents proved, secondary evidence cannot be permitted.

6. I have perused the orders of the trial court. It is to be noted that the secondary evidence is normally permitted only when the party seeks to rely upon the secondary evidence and complies the condition provided under Section 65 of the Indian Evidence Act. One of the essential condition is that they have to explain the circumstances

under which the original is lost or destroyed or not in his possession, whereas, the affidavit filed by the plaintiffs in this case to show as the reply notice was received by her along with suit summons in the earlier suit, this has been stated in the first time in the affidavit, whereas, the plaint is silent about the receipt of the notice in paragraph 4 of the plaint. It is specifically stated that he has received the previous suit summons, the plaint pleading silent about the receipt of any other documents along with summons in the year 1994. Now, it is contended that the reply notice received by her in the previous suit with summons for the previous year 1994.

7. It is curious to note that if reply is actually sent by the defendants it would not been received by the plaintiffs in the original suit or it ought to have been acknowledged by the counsel who sent original notice. The copy sought to be marked as a reply notice dated 25.05.1994 does not show any resemblance of any acknowledgement to believe that his reply was originally sent by the defendants. Further, the entire Xerox copy placed before this Court has been typed in green sheet and it appears that it has been typed recently. Even assuming that it is the only reply sent by the defendants, the plaintiff

would first establish that this was a reply originally sent by the defendants but it was received by later by the counsel who sent the original notice. Further, to believe that this reply notice was received by them along with the suit summons, there should have been at least Court seal in these documents, but, nothing is found on that. Further, there is no evidence available on record to show that whether the plaintiff has taken steps to call for the original reply notice which was said to have been filed in the original suit of the year 1994.

8. In the absence of any steps to explain the loss of original or the original is not in their possession, now, they cannot press into service some other documents, as if, the same is reply notice. Nothing prevented the plaintiff to establish the issuance of the reply notice through the counsel engaged on the earlier point of time. Therefore, unless the plaintiff accounts for loss of original or its destruction or establishes that the reply notice was not in their possession, as a matter of right, they cannot file such a document as a reply notice. Therefore, order of the Trial Court require interference.

9. Accordingly, the civil revision petition is allowed and the order of the trial court marking xerox copy of Reply notice is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

28.03.2019

msv
Index:Yes/No
Internet:Yes/No
Spekaing order: Non-speaking order

To

The learned Principal Sub Court,
Villupuram.

N.SATHISH KUMAR, J.

msv

C.R.P. (PD) No.1707 of 2012
and M.P.Nos.1 and 2 of 2012

28.03.2019