

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE **R.PONGIAPPAN**

C.R.P.PD.No.2413 of 2012
& M.P.No.1 of 2012

1. Mohideen Thambi (died)
2. Idroos umal
3. Beevi Fathima
4. Balkees Ummal
5. Zulaiha Ummal
6. Mohammed Meera Umma Haseena
7. Noor Mohamed Ayha
8. Seyed Mohamed

Petitioners 2 to 8 brought on record
by an order dated 16.04.2019 in
C.M.P. Nos.8888 & 8892 of 2019
in C.R.P.No.2401 of 2012

.... Petitioners

1. Abdul Allam
2. P.R.Abdul Qadeer

Vs

.... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 12.07.2011 made in I.A.No.123 of 2011 in O.S.No.181 of 2007 on the file of the District Munsif cum Judicial Magistrate, Ranipet.

For Petitioners : Mr.T.P.Prabakaran

For Respondents : Mr.K.Umar

ORDER

Aggrieved over the order dated 12.07.2011 passed in I.A.No.123 of 2011 in O.S.No.181 of 2007 by the learned District Munsif cum Judicial Magistrate, Ranipet, the deceased first petitioner, who is the first defendant in the said suit, has preferred this Civil Revision Petition.

2. Before the trial Court, the respondents 1 & 2 herein filed a suit in O.S.No.181 of 2007 as against the deceased first petitioner/first defendant and others and sought for the relief of declaration declaring that the respondents 1 & 2 are the absolute owner of the suit schedule property. Consequently, they prayed for the relief of permanent injunction restraining all the defendants from interfering with his peaceful possession and enjoyment of the property.

3. When the case was posted for examination of defendants' side evidence, the deceased first petitioner filed an application in I.A.No.123 of 2011, under Order 13 Rule 2 of C.P.C., and prayed the Court below to condone the delay in filing the documents, which were enclosed along with the petition. The learned District Munsif cum Judicial Magistrate, Ranipet, after affording opportunity to other side, dismissed the application by mentioning the reason that, the deceased first petitioner has not filed any written statement and thereby he was not having any pleading in this petition.

Further the learned Magistrate observed that since there was no pleading by way of written statement on the side of the first petitioner/first defendant, there is no reason to receive the documents filed by the first petitioner. Accordingly, the learned Magistrate dismissed the said application. Aggrieved over the same, the first petitioner is before this Court.

4. During the pendency of this Civil Revision Petition, the first petitioner died. Hence his legal representatives are impleaded as petitioners 2 to 8 to proceed with the present petition.

5. Today when this petition is taken up for hearing, the learned Counsel appearing for the petitioners and the respondents are present.

6. The learned counsel appearing for the petitioners would contend that even though, the petitioners quoted wrong provisions, the same cannot be created platform for dismissing the said application. Further non receiving of the written statement filed by the deceased first petitioner is also the atrocity done by the Court below. According to the learned counsel for the petitioners, the application filed by the petitioners deserves to be allowed.

7. On the other hand the learned counsel appearing for the respondents would contend that the deceased first petitioner filed an

application by quoting wrong provisions in belated stage, thereby the order passed by the learned District Munsif cum Judicial Magistrate, Ranipet is found correct.

8. The submissions made by the learned counsel on either side are considered.

9. It is well settled principle that quoting wrong provisions is not a ground for dismissing the relief prayed by the parties. In this case, instead of mentioning Order 8 Rule 1A of C.P.C., the deceased first petitioner filed the said application under Order 13 Rule 2 of C.P.C. Hence, only because of the said reason, the petition filed by the petitioners cannot be dismissed.

10. In respect of the pleading, in the connected Civil Revision Petition in C.R.P.No.2401 of 2012, filed by these petitioners, today this Court directed the Court below to receive the written statement filed by D1 to D3, by accepting the memo filled by the deceased first petitioner, which was rejected in the earlier occasion. So, it cannot be said that there is no pleading to set up the defence.

11. Further more, in ordinary sense, it is not correct to refuse to receive the document filed by the parties. The Court below if feels that the

document is irrelevant for the suit proceedings, it can be testified only at the time, when the document is marked as exhibits. Of course, if it feels that the particular document is irrelevant, it is the duty of the learned counsel on either side to raise objections at the time of marking the document as a exhibit. Instead of that, refusing to receive the document is not fair.

12. In view of the above discussion, the order dated 12.07.2011, passed in I.A.No.123 of 2011 in O.S.No.181 of 2007 on the file of the District Munsif cum Judicial Magistrate, Ranipet, is set aside and the learned Magistrate is directed to receive the document filed by the petitioner and proceed the case in accordance with law.

13. Accordingly, this Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

13.09.2019

Internet : Yes / No

Index : Yes / No

Speaking / Non Speaking order

rts

To

The District Munsif cum Judicial Magistrate,
Ranipet.

R.PONGIAPPAN, J.

rts



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