

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRP PD NO.3688 of 2013 and
M.P.No.1 of 2013

1. Rajeswari
2. Palaniammal ... Revision Petitioners

Vs.

1. Radhammal
2. Ponnambalam
3. Vasantha
4. Ayyakannu ... Respondents

Prayer: Civil Revision Petition filed under Section 227 of the Constitution of India against the order dated 11.07.2013 passed in I.A.No.102 of 2013 in O.S.No.241 of 2009 by the Principal District Judge, Chidambaram.

For Revision Petitioner : Dr.P.Jagadeesan
For Respondents 1 to 3 : Mr.A.Muthukumar
For 4th respondent : Await service

ORDER

Revision Petition filed against the order dated 11.07.2013 passed in I.A.No.102 of 2013 in O.S.No.241 of 2009 by the Principal District Judge, Chidambaram, dismissing the application for reception of additional document namely an unregistered sale deed dated 05.07.1997.

2. The revision petitioners are the defendants in the suit in O.S.No.241 of 2009. The suit has been filed by the plaintiffs for permanent injunction on the ground that they are in possession of the suit property. The defendants denied the possession of the plaintiffs in the suit property. Their specific contention is that the possession of the suit property was passed to them through a sale deed dated 05.07.1997. In the written statement, there is a pleading with regard to the existence of a sale agreement and also the unregistered sale deed dated 05.07.1997 with regard to the suit property. These facts are not in dispute. The defendants have filed an application to receive the said sale deed as additional document on the ground that the above document was in possession of the brother of the first defendant and now only they came to know about the possession of the document and hence prayed for reception of the said document.

3. The respondents contested the petition stating that even during the course of trial also, the defendants have not filed the said document and the same is created for the purpose of the case.

4. The trial court dismissed the said application on the ground that the first defendant's signature is not found in the said sale deed and that the application had been filed only to protract the proceedings.

5. It is to be noted that the suit has been filed for permanent injunction. The contention of the defendants is that the possession of the suit property is lying with them through a sale deed dated 05.07.1977. These facts are clearly pleaded in the written statement also. However, the said document has not been filed along with the written statement on the ground that the same was in possession of the brother of the first defendant and that they came to know about this fact only recently. When the defendants claimed right over the property based on the above sale deed, such document ought to be allowed in evidence to substantiate the right of the parties. The trial court ought to have considered the pleadings of the respective parties and allowed the document to be marked in evidence. Substantial right cannot be

shut merely on the ground that there was a delay in filing the application. The reasons assigned in the application for such delay is also appears to be probable. The trial court has not looked into these facts and simply dismissed the application on the ground that the signature of the first defendant is not found in the agreement. Genuineness and reliability of the documents are the matter of evidence and proof and it is not for the court to decide same at the application stage itself. Therefore, I am of the view that the entire case pleaded by the defendants is on the basis of the document sought to be marked, the revision petitioners are to be given an opportunity to file such document.

6. In the result,

(i) the revision petition is allowed. No costs. The connected civil miscellaneous petition is closed.

(ii) The order of the trial court dated 11.07.2013 passed in I.A.No.102 of 2013 in O.S.No.241 of 2009 is set aside and the document sought to be marked by the revision petitioners is allowed to be exhibited. During trial, sufficient opportunities should be given to the parties to prove the document and also opportunities should be given to other side to take defence in respect of the document.

(iii) The trial court is directed to the dispose of the suit within six months from the date of receipt of a copy of this order.

12.02.2019

Index : Yes / No
Internet : Yes / No
speaking/non speaking
mst

To

The Principal District Judge,
Chidambaram.



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N.SATHISHKUMAR, J.
mst



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