

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R.SURESH KUMAR

C.R.P.(PD)No.2224 of 2018 and
C.M.P.No.13993 of 2018

S.Kumar

... Petitioner

Vs.

1.Meeran Mohideen
2.Gani
3.Sharif
4.Jafrudeen

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 12.02.2018 passed in I.A.No.225 of 2015 in O.S.No.46 of 2004 on the file of the District Munsif cum Judicial Magistrate, Thirukalukundram.

For Petitioner : Mr.S.Thanka Sivan

For Respondents : Mr.N.A.Nissar Ahamad

ORDER

This revision petition has been filed against the fair and decretal order passed in I.A.No.225 of 2015 in O.S.No.46 of 2004 on the file of the District Munsif cum Judicial Magistrate, Thirukalukundram, by order dated 12.02.2018.

2.The revision petitioner is the plaintiff before the trial Court, who filed the said suit for bare injunction where the respondents are the defendants.

3.In the said suit, application in I.A.No.225 of 2015 was filed by the plaintiff under Order 76 of Civil Rules of Practice read with Section 151 of C.P.C. to issue Subpoena to the Office of the Head Quarters Tahsildar, Thirukalukundram to cause of production of the records relating to the patta issued in respect of the suit property and to give evidence in respect of the same.

4.The said application, having been considered, was dismissed by the trial Court in the impugned order, as against which, the present revision has been filed by the petitioner/plaintiff.

5.Heard Mr.S.Thanka Sivan, learned counsel for the petitioner and Mr.N.A.Nissar Ahmad, learned counsel for the respondents.

6.Admittedly, the suit has been filed for the prayer of bare injunction where the trial has been completed and almost arguments also had been closed and it is posted for Judgment.

7.In the meanwhile, since this application had been filed and the same was disposed of, by order dated 12.02.2018, as against which, the present revision has been filed.

8.The learned Judge, in the impugned order, had rejected the plea of the plaintiff stating that, based on the documents filed before the Court below as Exhibits, the issue can be decided, as the same is only for a bare injunction and for the said purpose, the Tahsildar concerned need not be summoned for deposition along with the documents concerned in original and by stating the said reason, the application was rejected.

9.The learned counsel appearing for the petitioner would contend that, in respect of the suit property, patta was issued in favour of the plaintiff, which has been marked as Ex.A.3, while so, the defendants also, through their witness, marked Ex.B.3, which is also claimed to be a patta issued in their favour. Only in that context, since there had been two pattas, in respect of the same property, according to the learned counsel for the petitioner, the patta issued in favour of the defendants, which has been marked as Ex.B.3 may be a fraudulent

document. Therefore, in order to ascertain the fact, it become necessitated to summon the Tahsildar concerned along with the original records, to produce the same before the trial Court and to depose in that regard.

10.However, Mr.N.A.Nissar Ahmad, learned counsel appearing for the respondents would submit that, no doubt, Ex.A.3 was marked as a document i.e., patta claimed to have been issued in favour of the plaintiff. However, the stand of the defendants is that, the said patta issued in favour of the plaintiff has subsequently been cancelled and patta has been issued in favour of the defendants i.e., Ex.B.3, which was marked on their behalf.

11.On consideration of these submissions made by both sides and taking into account the factual matrix, this Court has considered in that context, under which the officials can be summoned or documents can be called for, from the officials to resolve the issue by the Civil Court where under Rule 75 of the Civil Rules of Practice, it is provided that, if the Court, either *suo motu* or an application filed in this regard, by way of verification petition, can issue summons, directing the

official authorities in whose custody with some official documents are available to be produced before the Court in original for verification and thereafter, it may be returned. The relevant portion of Rule 75 of the Civil Rules of Practice reads thus:

"75.Production of records in the custody of a public officer other than a court:-

(1) A summons for the production of records in the custody of a public officer other than a court shall be in Form No.23 and shall be addressed to the head of the department concerned and in the case of summons to a District Registrar or Sub-Registrar in whose office or sub-office, as the case may be, the required records are kept. A summons for the production of revenue papers kept in any office in a district shall in all cases be directed to the Collector of the district:

Provided that where the summons is for the production of village accounts, including field measurement books, such summons shall be addressed to the Tahsildar or to the Deputy Tahsildar in independent charge, as the case may be.

(2) Every application for such summons shall be made by a verified petition setting out (i) the document or documents the production of which is required; (ii) the relevancy of the document or documents; and (iii) in case where the production of a certified copy would answer the purpose, whether application was made to the proper officer for a

certified copy or copies and the result of such application.

(3) No court shall issue such a summons unless it considers the production of the original necessary or is satisfied that the application for a certified copy has been duly made and has not been granted. The court shall in every case record its reasons in writing and shall require the applicant to deposit in court, before the summon is issued, to abide the order of the court, such sum as it may consider necessary, to meet the estimated cost of making a copy of the document when produced.

(4) On production of the documents in obedience to the summons the court unless it thinks it necessary to retain the original shall direct a copy to be made at the expense of the applicant and shall with all convenient speed return the original retaining the copy."

12. Therefore, if at all any issue to be resolved as to whether the Ex.A.3 is genuine or Ex.B.3 is genuine, since both of them claimed to have been issued patta in their favour in respect of the suit property, certainly the trial Court has to call for the records from the concerned Revenue Department i.e., the Tahsildar concerned, who is the authority, to issue patta under Patta Passbook Act and in this regard, if at all any application is filed under Sub-rule (2) of Rule 75 of Civil Rules of Practice, such an order could have been passed by the Court

below and even in the absence of any such application to be filed by the parties, the Court can *suo motu* call for those records, as contemplated in the said Rule, as mentioned herein above.

13.In that view of the matter, this Court is of the view that, the civil revision petition is disposed of, with the following direction:

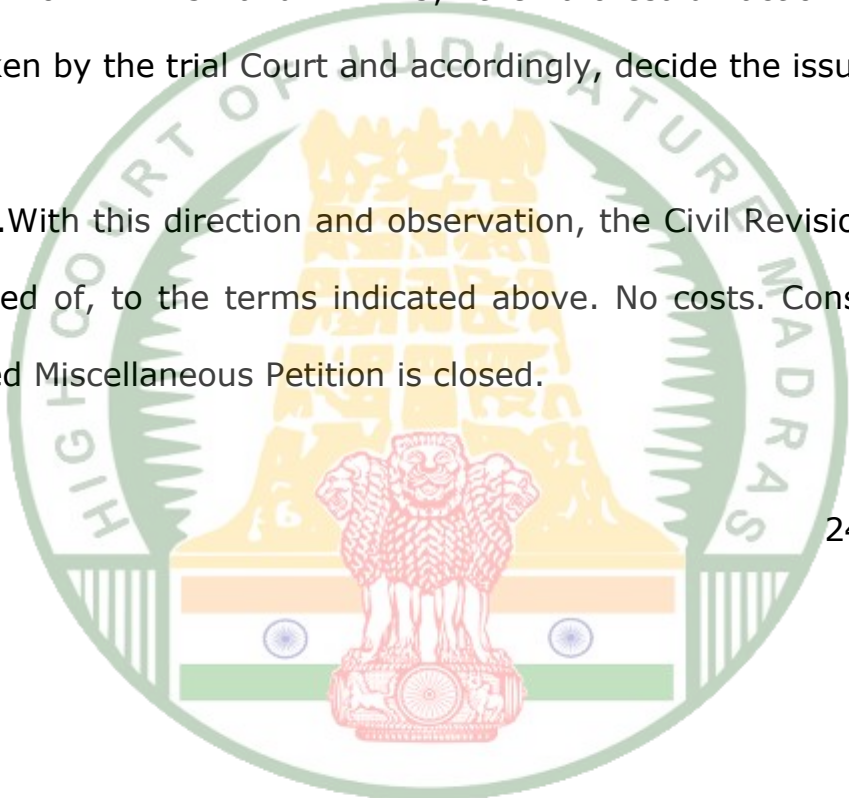
That the order impugned is set aside and the matter is remitted back to the trial Court, on such remittance, a direction is given to the trial Court to issue order requiring the Tahsildar concerned to depute a responsible staff from the Office of the Tahsildar/Taluk to produce the original records pertaining to the suit property, especially in the context of the patta i.e., Ex.A.3 and Ex.B.3 issued or claimed to have been issued in favour of the plaintiff and defendants respectively and on receipt of such original records, after having verified the same, the trial Court can return the same and accordingly, the issue raised therein, in the present context, can also be resolved by deciding the suit on merits.

14.The needful, as indicated above, shall be undertaken by the trial Court immediately, as both the learned counsels informed that, the suit is ripe for disposal, as the trial was over and arguments were heard. Therefore, only for the purpose of ascertaining the veracity and genuinity of Ex.A.3 and Ex.B.3, the aforesaid action shall be undertaken by the trial Court and accordingly, decide the issue.

15.With this direction and observation, the Civil Revision Petition is disposed of, to the terms indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

24.09.2019

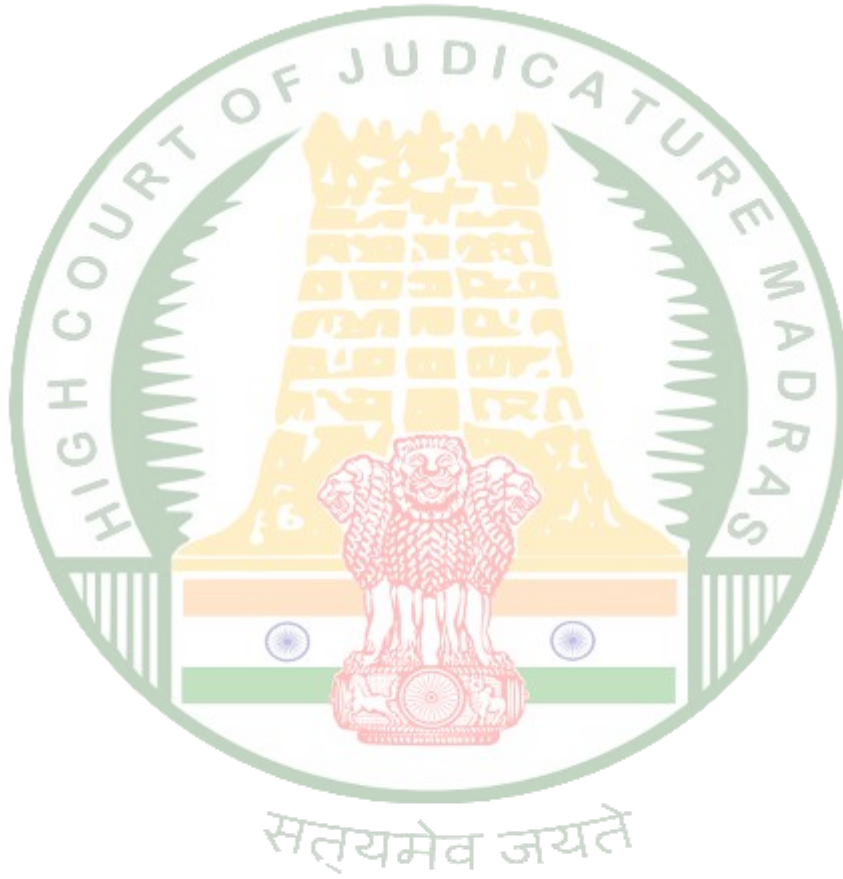
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The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital of Ashoka in front of it. The lion capital is set against a background of the Indian national flag's saffron, white, and green horizontal stripes, with the Ashoka Chakra in the center. The words "HIGH COURT OF MADRAS" are written in a circular border around the central image. Below the seal, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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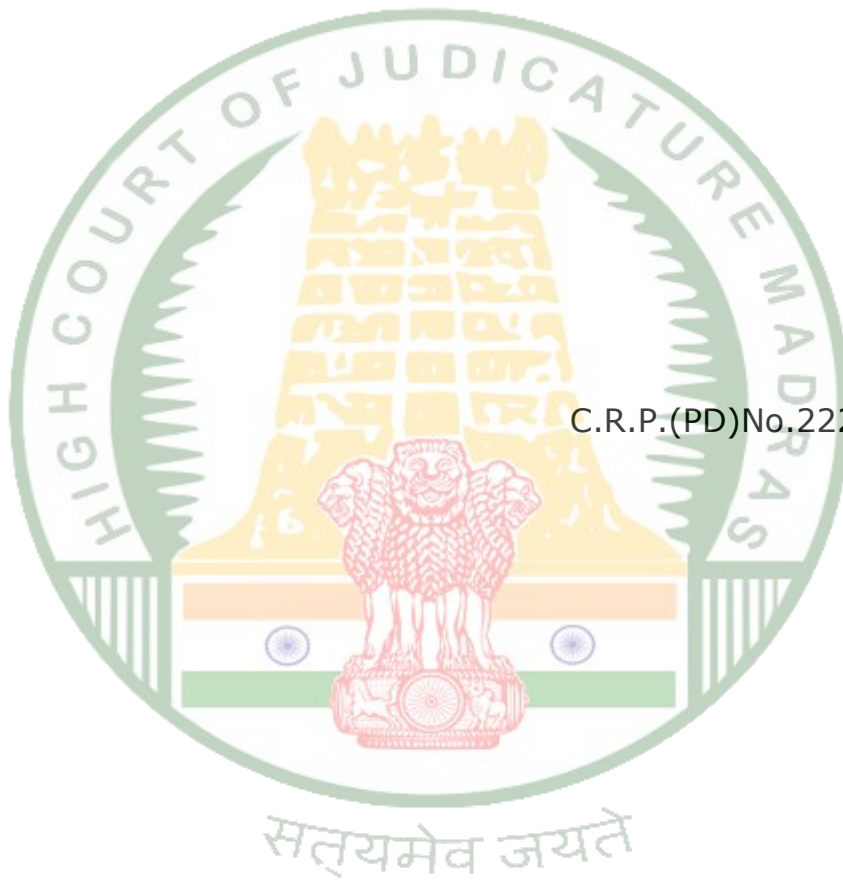
The District Munsif cum Judicial Magistrate,
Thirukalukundram.



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R.SURESH KUMAR, J.
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