

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2019

CORAM :

THE HON'BLE MS. JUSTICE P.T.ASHA

C.R.P. (PD) Nos.2450 to 2455 of 2018

and

C.M.P. No.15015 of 2018

R.Rustham Singh

... Revision Petitioner

Vs.

1.C.Elumalai

2.E.Senthil Kumar

3.E.Sridhar

4.P.M.R.Sarkar

K.Ganesh Singh (deceased)

A.G.L.Irudhayaraj (deceased)

5.G.Vasantha Bai

6.I.Isabella

7.I.EdmundSagayaraj

8.I.AshaSagayarani

9.I.Hema Sagayarani

... Respondents

COMMON PRAYER: Civil Revision Petitions in C.R.P. (PD) Nos.2450 to 2455 of 2018 filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 22.06.2018 made in I.A.Nos.15665 to 15670 of 2017 in O.S.No.12065 of 2010 respectively, on the file of the VI Additional

For Petitioner : Mr.Om Prakash, Senior Counsel
for M/s.Pass Associates

For Respondents

R1 to R3 : Mr.R.Thiagarajan

R6 to R9 : Mr.P.S.Raman, Senior Counsel
for M/s.S.Geetha for Caveator

COMMON ORDER

The above six Civil Revision Petitions viz. C.R.P. (PD) Nos.2450 to 2455 of 2018 are filed, challenging the orders passed in I.A.Nos.15665 to 15670 of 2017 respectively in O.S.No.12065 of 2010 on the file of the VI Additional City Civil Court, Chennai.

2.The various applications have been moved for summoning the respective public authorities to adduce evidence. It is necessary to briefly allude to the facts of the case before considering the revision petitions before this Court.

3.The respondents 1 to 3 had filed a suit in C.S.No.597 of 2006 on the file of this Court and on enhancement of the pecuniary jurisdiction, it was later transferred to the VI Additional City Civil Court, Chennai, and numbered as O.S.No.12065 of 2010. The prayer that was sought in the above suit was as follows :

"16.The plaintiffs therefore pray for a judgment and decree as against the defendants :-

(a) for a declaration that the Settlement deed dated 25.11.1968 and registered as Document No.4807 of 1968, Book I, Volume 1894, Pages 53 to 58 of the Sub Registrar, Madras North by the first defendant in favour of 2nd defendant is illegal, invalid and non-est in the eyes of law and consequently declare the same as sham and nominal and not binding upon the plaintiffs or the suit property;

(b) for a declaration that the sale deed dated 05.11.1975 and registered as Document No.90/76 in the office of the District Registrar, Madras South is illegal, invalid and non-est in the eyes of law and declare the same as sham and nominal and not binding upon the plaintiffs or the property;

(c) for a permanent injunction restraining the defendants, their men, agents, servants or any one claiming through them from interfering with the plaintiffs' peaceful possession and enjoyment of the property more fully described in the schedule hereunder."

4.The dispute is with reference to an extent of 4.78 acres or 2,13,600 sq.ft or thereabouts (89 Grounds) situated at No.138, Tharamani Village, Anna Street, Mambalam-Guindy Taluk, Chennai District, within specific boundaries.

5.The plaintiff traces the title to the suit property as follows :

"The entire property comprised in S.No.92 situated at Tharamani Village measuring an extent of 8 acres and 36 cents originally belonged to one A.V.Jaganathan @ A.V.Jaganathadu, S/o.A.Vijayaraghavalu Naidu. The said A.V.Jaganathadu sold an

extent of 2 acres and 23 cents out of the total extent of 8 acres and 36 cents in favour of one Rao Bahadur P.Munilal by sale deed dated 22.04.1953, which stands registered as Document No.823/1953 in the office of the Sub-Registrar, Saidapet. The said P.Munilal formed a partnership firm on 14.12.1956 in the name and style of "Sree Durga Blue Metal Quarry". The other three partners of the firm were (1)F.K.Guha, (2) K.L.Chowdry and (3) K.R.Jaswant Sarkar. P.Munilal, who acquired an extent of 2 acres and 23 cents by Document No.823/1953 dated 22.04.1953, sold the said extent of land to the partnership firm by sale deed dated 15.12.1956 registered as Document No.3226/1956 in the office of the Sub-Registrar, Saidapet. A.V.Jaganathan, who was holding the remaining extent of land measuring an extent of 6 acres and 13 cents in the said survey number, sold that land also to the aforesaid partnership firm by sale deed dated 08.04.1957 registered as Document No.865/1957 in the office of the Sub-Registrar at Saidapet. Thus, the entire extent of 8 acres and 36 cents in S.No.92 became the absolute property in the partnership firm. One of the partners by name F.K.Guha died on 24.11.1958, leaving behind his legal heirs, which included the other partner in the firm by name K.L.Chowdry; all of them executed a release deed dated 30.07.1959 registered as Document No.1626/1959 in the office of the Sub-Registrar at Saidapet. Under the said document, they released their rights in that property in favour of P.Munilal and his son K.R.Jaswant Sarkar. Thus the partnership firm was owning the entire extent of 8 acres and 36 cents in S.No.92. Later on, the property was sub-divided into three survey numbers i.e., S.No.92/1-measuring of 3 acres and 10 cents, S.No.92/2-measuring an extent of 48 cents and S.No.92/3-measuring an extent of 4 acres and 78 cents. The

Government of Tamil Nadu issued a notification for acquisition of the entire property comprised in S.No.92 for Southern Higher Technological Institute, Guindy, Adyar, Chennai. Accordingly an award was passed on 27.01.1959 and the lands comprised in S.Nos.92/1 ad 92/2 measuring an extent of 3 acres and 59 cents were acquired and compensation was paid to the land owners. Subsequently, Government of Tamil Nadu, by Notification dated 10.04.1969, dropped further proceedings under the Land Acquisition Act in respect of S.No.92/3 measuring an extent of 4.78 acres. This property comprised in S.No.92/3 is the suit schedule property. The plaintiffs' case is that the then partners of the partnership firm P.Munilal and his son K.R.Jaswant Sarkar appointed one G.V.Kesavalu Naidu @ Adi Kesavalu Naidu as the sole proprietor of the property by a deed dated 15.12.1962. Under this deed, the said Kesavalu Naidu became the sole proprietor of the partnership firm and its assets. He died on 21.12.1977, leaving behind him, his legal heirs G.K.Gajalakshmi, G.K.Palani and G.K.Santhanam, who succeeded to the estate of Kesavalu Naidu. According to the plaintiffs they have purchased the suit schedule property from Gajalakshmi and others by three separate sale deeds dated 05.07.2006, 07.07.2006 and 05.07.2006. It is alleged by the plaintiffs that the third defendant is trying to litigate over the property belonging to them by giving a complaint to the Velachery Police Station against them as if they are trying to trespass into the suit property belonging to him. According to the plaintiff, on verification, it came to light that the second defendant has executed a sale deed dated 05.11.1975 in favour of the third defendant. It further came to light that a settlement deed dated 25.11.1968 had been executed by the first defendant in favour of the second defendant. According to

the plaintiffs, these two documents are bogus and therefore they have filed the present suit seeking for a declaration that those two documents are invalid."

6.The 3rd defendant who is the contesting defendant has entered appearance and he would trace his title to the suit property by contending that the original extent of the property measuring 8 acres and 36 cents belonged to the partnership firm and the partners P.Munilal and his son K.R.Jaswant Sarkar, later called as P.M.R.Sarcar, had purchased the property. Munilal died in the year 1964 and his son P.M.R.Sarcar succeeded to the property, he had studied in England and was staying in Germany. He had therefore executed a Power of Attorney, since, he wanted to liquidate his properties in India and Mr.M.Duraisamy, a senior partner of King & Patridge Advocate firm was appointed as Power of Attorney, vide Power of Attorney dated 11.06.1968. Pursuant to this Power of Attorney, the said P.M.R.Sarcar, represented by his Power of Attorney, executed a registered settlement deed, dated 25.11.1968, in favour of the 2nd defendant and the 2nd defendant in turn sold the property to the 3rd defendant on 05.11.1975. From the date of sale, the 3rd defendant has been in continuous possession and enjoyment of the suit property by running a quarry business, after obtaining necessary licence from the Collector. The 3rd defendant had also obtained exemption under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. He had also obtained the compensation for the land acquired by the Government for construction of 100 feet road. Therefore, he had claimed the right, title and

interest to the suit property.

7. When issues had been framed, the 4th respondent had got himself impleaded in the above proceedings and had filed a written statement on 24.06.2014 and in the written statement, he has come forward with the following counter claim.

"declaring that 2nd defendant is the legal heir of P.Munilal and his son K.R.Jaswant Sarkar 1st defendant and consequentially has succeeded to the estate of said persons and also for consequential decree of permanent injunction against the plaintiff and the 3rd defendant not to interfere with the peaceful possession of this suit schedule property and thus render justice."

8. With these pleadings in place, the parties had come forward to trial. The 4th defendant was examined as D.W.2, during which, he had marked several public documents, both through himself and while cross-examining the other witnesses. After his evidence was over, he has come forward with the impugned applications. The said applications have been filed, invoking the provisions of Order XVI Rule 1 of the Code of Civil Procedure r/w. Order XIII Rule 1 and Section 151 of the Code of Civil Procedure. The reason that has been adduced for summoning the officials has been stated in the affidavit, which basically was, to question them on the documents, that had been filed by the 3rd defendant.

9.It is also seen in the affidavit, filed in support of the petitions that the petitions have been filed by the Power Agent and this Court has also been informed that, it is the Power Agent, who has got into the box to adduce evidence as D.W.2 and the 4th defendant has not presented himself before the Court, for oral evidence.

10.The plaintiffs have filed a counter, where, apart from questioning the right of the Power Agent to file the application to issue subpoena, they have also contended that the summoning of these witnesses are not germane to the case of the defendant and that they have to win or lose on the strength of the case and not on the weakness of the opponent.

11.The 3rd defendant as the 6th respondent has filed a detailed counter affidavit, in which, apart from questioning the locus of the 4th defendant to file the petitions, they have also contested that, the 4th defendant, at the time of submission of the list of witnesses, has not made any reference to the official witnesses. Further, Order XVI of the Code of Civil Procedure prescribes the procedure for summoning witnesses. They would contend that the 4th defendant was impleaded on 13.03.2013 and additional issues were thereafter framed on 17.11.2014 and the defendant has failed to furnish the list of witnesses and when the matter has reached the fag end, the above applications have been filed, which is nothing but an attempt to protract the proceedings which is also in violation of the orders of the Supreme Court in

S.L.P.No.94 of 2007, which clearly enjoined the parties to complete the trial within a period of six months.

12.Heard Mr.Om Prakash, learned Senior Counsel, appearing on behalf of the revision petitioners. After briefly touching on the pleadings of the parties to the proceedings, the learned Senior Counsel submitted that the summoning of the witnesses is of utmost importance, since, only when they are examined, they would be able to give clarity to the documents and this is very essential, since, the 4th defendant has come forward with a specific case that the documents that have been filed on either side, namely the plaintiff, as well as the 3rd defendant, are fabricated and forged documents. Therefore, the dismissal of these petitions would cause great prejudice to the 4th defendant.

13.He would further submit that, even on the day of filing of the suit, the defendants 1 and 2 were dead, despite which, suit has been filed. It was only after he had been made a party and he had obtained the documents, he could move the present applications. He would draw the attention of this Court to Para Nos.5 and 6 of the counter filed by the plaintiffs in response to his impugned petitions, wherein, there has been no serious objections to the said applications. He would further contend that the only objection, which has been made by the 3rd defendant is that, the application has been moved at a fag end, after evidence has been concluded and also that the list of

witnesses were not been provided. He would contend that, it is only after he had entered appearance, he could file the applications, immediately after his evidence has been concluded and it cannot be stated that the applications were delayed.

14.He would further draw the attention of this Court to the order of the Court below and state that the learned Judge has totally misdirected himself, since, he has not understood the real purport of taking out the applications and has simply proceeded on the basis that, it is for the 4th defendant to prove that he is the legal heir of his father and had therefore, inherited the property from his father.

15.He drew the attention of this Court to the judgment of the Division Bench of this Court in O.S.A.No.405 of 2018, where, the Court has held that, in order to ascertain the basis on which the patta has been granted in that case, it was necessary to examine the officer, which, to some extent, would throw light on the dispute between the parties and similar being the case here, the learned Senior Counsel would state that his application should be ordered.

16.Mr.R.Thiagarajan, learned counsel appearing on behalf of the plaintiffs/respondents 1 to 3 would submit that the applications are totally unnecessary and they would not in any way advance the case of the plaintiff,

since, the plaintiff only seeks to have himself declared as the legal representative of deceased Ganesh Singh, the 2nd defendant and consequently, the legal heir of Sarkar Singh, the 1st defendant. He would further argue that, under Section 212 of the Indian Succession Act, no right to any part of the property of a person, who has died intestate, can be established in the letters of administration or by the Court.

17.He would further contend that though the 4th defendant was claiming a right under Section 34 of the Specific Relief Act, 1963, he has not filed any documents to show that he is the legal heir or that the 1st defendant is dead. He would submit that the 1st defendant is not dead. He would also argue that the 4th defendant has not entered the witness box and he has only examined the Power Agent, who has come forward to represent the petition.

18.Per contra, Mr.P.S.Raman, learned Senior Counsel appearing on behalf of Mr.Rajnish Pathiyil, counsel for the 3rd defendant/6th respondent would invite the attention of this Court to the fact that, the 3rd defendant, after the purchase of the property, had taken possession of the same. He would contend that, originally, the Government had acquired the entire extent of 8 acres and it was only on account of his efforts, there was a denotification of the acquisition proceedings and the acquisition was dropped with reference to the suit property. He would also submit that the compensation was awarded only to the 3rd defendant and it was the 3rd defendant, who had filed

civil suits to evict 43 encroachers, out of whom, 15 had been settled by making payments and as against 20 others, suit has been filed and decreed in favour of the 3rd defendant and only 8 of them were left to be evicted. He would submit that the witnesses are not required to be examined, since, the certified copies of the documents are already on file. He would further argue that, as per Rule 75(3) of the Civil Rules of Practice, the Court would issue summons only if it is satisfied that application for certified copies had been made and had not been granted.

19. The learned Senior Counsel relies on the following judgments reported in -

(i) 2012 (2) MWN (Civil) 588

[V. Murugaiyan v. A. Kanakasabapathi Thevar]

"7. Rule 75 of Civil Rules of Practice deals with production of records in the custody of a Public Officer other than a Court. As per Rule 75(3) of Civil Rules of Practice, the Court shall issue summons for production of documents only if the Court is satisfied that Application for a certified copy has been duly made and has not been granted. Rule 75(3) reads as under:

"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 summons 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."

8. The Revision Petitioners/Plaintiffs have not produced any document before the Trial Court to show that they have also applied for certified copy and that the same was not granted. In such view of the matter, the Trial Court rightly dismissed the Application declining to summon the registers.

(ii) 2013 (4) CTC 684

[Indian Auto Gas Company Limited v. K.Radha Lakshmi & another]

"6. Similarly, the witnesses summoned by the Petitioner are not necessary to prove the contents of the document as the documents will speak itself and the officials cannot have any personal knowledge and they will have to speak only from the documents. Hence, I am of the opinion that the Petitions filed by the Petitioner at the fag end of the trial is a clear abuse of process of Court and that has been filed only to drag on the proceedings and the Petitioner could have filed those documents by getting certified copies from the officials and hence, the Court below has rightly dismissed the Applications and I do not find any reason to interfere with the order of the Court below."

(iii) 2015 (2) L.W. 460 [G.Venkatesan v. Balu]

"6. A reading of the said prayer eliminating the spelling mistakes and grammatical mistakes, will give a meaning that as per the prayer the Assistant Commissioner of Income Tax, Vellore has to send for the document. From

where? shall be the next question. The prayer should have been that the Court shall send for the documents from the Assistant Commissioner of Income Tax and not for a direction to the Assistant Commissioner to send for. Even otherwise, Rule 76 of Civil Rules of Practice does not contemplate an order sending for a document from a public officer other than a Court. It contemplates the issuance of a certificate to the applicant to enable him to obtain a certified copy from the appropriate authority. Rule 75 of the Civil Rules of Practice deals with the procedure for causing production of documents in the custody of a public office other than a Court. In such a case, the proper procedure is to issue a summons to the public officer to produce the document and not to send for such a document from the public officer which shall be done in the case of a document in another Court, for which the appropriate rule shall be 74. In cases falling under Rule 74, no summons shall be issued and a letter of request in Form No. 22 shall be issued, whereas in cases coming under Rule 75, a summons shall be issued to the public Officer for the production of the document. Rule 75 shall be resorted to only in cases wherein the party applying for such summons shall not be in a position to get the certified copy of the document from the public officer concerned. When certified copies can be obtained and the same will serve the purpose, the prayer should be made only under Rule 76 of the Civil Rules of Practice for the issuance of a certificate to enable him to get the certified copy. Only under one exceptional circumstance wherein the production of the certified copy will not serve the purpose and the production of the original itself shall be necessary for the perusal of the Court, despite the

availability of the procedure under Rule 76, summons under Rule 75 can be issued."

20. Heard the learned counsel appearing for the parties and perused the documents.

21. The revision petitioner has come forward with the counter claim to declare the 2nd defendant as legal heir of P. Munilal and his son K.R. Jaswant Sarkar, 1st defendant, and consequently succeeded to the estate of said persons and for consequential injunction, restraining the plaintiff and the 3rd defendant from interfering with the possession and enjoyment of the suit schedule property. The revision petitioner has not produced any document to show that the 1st and 2nd defendants are dead and the details of their legal representatives. Therefore, the limited prayer of the revision petitioner is to have the 2nd defendant declared as legal heir. The documents, which are now sought to be clarified through the public authorities, has no relevance to the prayer in the counter claim. Further, the documents have been marked through various witnesses and all the documents are already before the Court for its scrutiny.

22. This Court in the judgment reported in **2013 (4) CTC Pg.684**, though dealing with a similar application under Section 76 has held as follows:

"6. Similarly, the witnesses summoned by the Petitioner are not necessary to prove the contents of the document as the documents will speak itself and the officials

cannot have any personal knowledge and they will have to speak only from the documents. Hence, I am of the opinion that the Petitions filed by the Petitioner at the fag end of the trial is a clear abuse of process of Court and that has been filed only to drag on the proceedings and the Petitioner could have filed those documents by getting certified copies from the officials and hence, the Court below has rightly dismissed the Applications and I do not find any reason to interfere with the order of the Court below."

23. Applying the ratio of judgment to the present case, moving the revision petitions at the stage, when the matter is posted for arguments is definitely an abuse of process of Court and totally unnecessary for deciding the issue in the counter claim. It is open to the 4th defendant to rely upon the said documents during the arguments particularly, since, the marking of those documents have not been objected to, by either the plaintiffs or by the 3rd defendant and point out the lacunae or otherwise vis-a-vis the documents produced by the plaintiffs and the 3rd defendant and there is no necessity to examine the public authorities to establish the counter claim of the revision petitioner.

24. From a reading of the affidavit filed in support of the impugned applications, it is also seen that, the witnesses are not sought to be examined to establish the counter claim, but only on the veracity of the documents, filed by the plaintiffs and the 3rd defendant. Further, the invocation of the provisions of Order XVI Rule 1, Order XIII Rule 1 of the Code of Civil

Procedure at the stage, when the matter is listed for arguments, is also not correct. The revision petitioner, who is aware and already in possession of the documents, even prior to his getting into the box, ought to have taken steps much earlier, if so advised, and not waited for the fog end, when the matter is posted for cross-examination. Hence, I find no infirmity in the order passed by the learned VI Additional Judge, City Civil Court, Chennai.

25. In the result, these Civil Revision Petitions stand dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

26. The learned VI Additional Judge, City Civil Court, Chennai, is directed to dispose of the suit on or before 15.03.2019 and report compliance to this Court.

12.02.2019

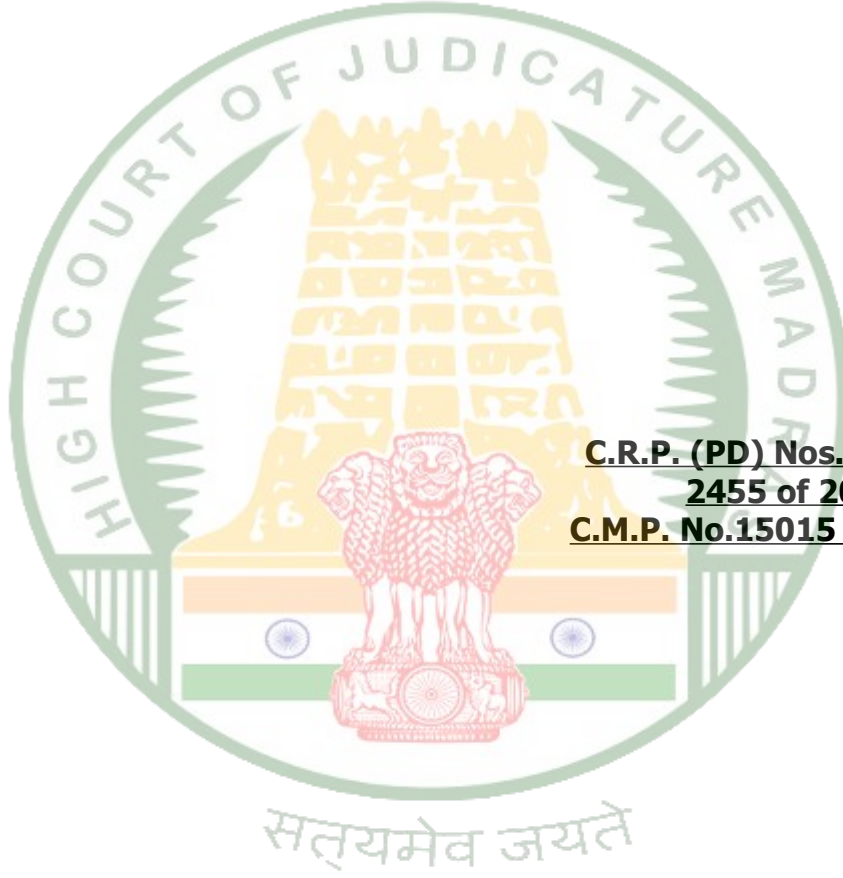
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P.T.ASHA, J.

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