

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

C.R.P.(PD)No.1903 of 2019 and
C.M.P.No.12530 of 2019

D.Muruga Ramananthan

... Petitioner

Vs.

1.R.Loganathan

2.Indian Overseas Bank,
Madhampatti Branch,
Coimbatore.

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal orders dated 04.04.2019 in I.A.No.1 of 2019 in O.S.No.176 of 2013 on the file of the I Additional District and Sessions Judge's Court, Coimbatore,

For Petitioner : Mrs.A.Kundavai

For 1st Respondent : No appearance

For 2nd Respondent : M/s.Jayaganga

ORDER

This revision petition has been filed against the fair and decretal order dated 04.04.2019 in I.A.No.1 of 2019 in O.s.No.176 of 2013 passed by the I Additional District and Sessions Judge, Coimbatore.

2.The revision petitioner herein, who is the plaintiff in the suit, filed the suit for specific performance against the 1st respondent/ defendant. Subsequently, the 2nd respondent Bank also got impleaded as one of the defendant in the suit on the ground that the property in question which the petitioner/plaintiff claims, on having an agreement with the 1st defendant, as subsequently seems to have been mortgaged to the 2nd respondent Bank.

3.Before the trial Court, an application under Order 7 Rule 14 of the Civil Procedure Code, had been filed to file some more documents, which have been enumerated in the List of Documents along with the application, which consists of 18 documents.

4.The lower Court, after hearing both sides, has allowed the said application in part, by which, documents 12, 15 and 18 were alone permitted to file and in respect of other 15 documents, out of the 18, the application filed by the petitioner had been rejected by the Court below, through the impugned order, as against which, the present revision has been filed.

5.I have heard Mrs.A.Kundavai, learned counsel for the petitioner as well as Mrs.Jayaganga, learned standing counsel for the 2nd respondent Bank. Though notice have been served on the 1st respondent and the name of the 1st respondent has been shown in the cause list, when the case is called, no one is appeared for the 1st respondent.

6.The learned counsel appearing for the petitioner has brought to the notice of this Court that, in the List of Documents, 18 documents have been sought for to be filed and for which, permission had been sought for under Order 7 Rule 14 C.P.C., whereas the learned Judge allowed to file only three documents viz., Documents No.12, 15 and 18 and in respect of other documents, the application was disallowed.

7.I have gone through the reasoning given by the learned Judge, in the impugned order, where the learned Judge has stated that, most of the documents are only the photocopies and in this regard, neither the certified copy nor the original had been filed or produced. Therefore, even for secondary evidence purpose, those documents cannot be taken into account. Therefore, no purpose would be served in permitting the petitioner to file those documents.

8.That apart, the learned Judge has also given other reasons, in respect of some of the Documents i.e., 6 to 11, 13, 14, 16 and 17 to state that these are all the documents with regard to the Income Tax Return filed by the petitioner/plaintiff as well as the Bank passbook and Fixed Deposit Receipts and all those documents had been originated only after filing the suit and therefore, no way these documents, if it is filed, would be helpful to the petitioner/plaintiff to decide the issue raised in the suit.

9.By stating all these reasons, the learned Judge, having allowed only Documents No.12, 15 and 18, had rejected the application of the petitioner in respect of other documents.

10.The said reasoning given by the learned Judge, in rejecting those documents, in the considered opinion of this Court, may not be justifiable for the reason that, it is only filing of the documents. At the time of filing of the documents

along with the plaint or by way of subsequent application under Order 7 Rule 14 C.P.C., wherever originals are available readily, parties would file the same, otherwise the photocopy or certified copies are filed. At the time of marking the documents, it is for the party to rely upon those documents and they must take steps to mark those documents, by producing the original or certified copies and in case, the party, who wants to mark those documents, is not able to file either the original or certified copies, normally the Court would not accept the photocopy of such documents and even if any document is filed with objection of the other side, it does not mean that, mere marking of the document, the Court has accepted the evidenciary value of the document concerned and it is for the Court to decide whether such document to be marked, will have any evidenciary value in the context of the issue raised in the suit.

11. Though this position has been settled, in number of cases, the learned Judge has taken a different view, in the impugned order, thereby, rejecting the plea of the petitioner, to file so many documents on the ground that, those documents are only xerox copies and some of the documents, since have been originated or emanated after filing of the suit, may not be useful for the plaintiff to substantiate his case.

12. Whether a particular document is necessary or not, to be marked to substantiate the case of the parties to the suit can be decided at the time of marking the document and therefore, at the threshold, even for filing those documents, the Court normally would not stall the party to file the documents available with them. In that view of the matter, this Court is of the considered opinion that, the impugned order is liable to be interfered with. Accordingly, the same is interfered with and the order impugned insofar as disallowing the application of the petitioner for filing Documents No.1 to 11, 13 and 14, 16 and 17 is hereby set aside and the portion allowed by the lower Court in respect of Documents No.12, 15 and 18 is confirmed.

13. With these orders, the Civil Revision Petition is allowed, as indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

The I Additional District and Sessions Judge,
Coimbatore.

+1 cc to M/s.Anandagomathy Advocate sr78919
+1 cc to M/s.C.R.Prasanan Advocate sr79097

C.R.P. (PD) No.1903 of 2019

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