

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (PD) No.2668 of 2014

and

MP No.1 of 2014

1. M. Bakyam
2. M. Lakshmanan
3. M. Parameswari
4. M. Bhuvaneswari

... Petitioners

versus

1. M.Kumudha
2. M.Ayyappan
3. M.Rajeswari
4. The Chief General Manager,
Chennai Telephones
No.78, Purasaiwakkam High Road,
Chennai – 600 010.
5. The Welfare Officer,
Chennai Telephones,
No.78, Armenian Street,
Chennai – 600 001.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 24.06.2014 in I.A. No.4804 of 2014 in O.S. No.983 of 2002 passed by the learned XVII Assistant Judge, City Civil Court, Chennai in allowing the petition filed by the petitioner / plaintiff in I.A. No.4804 of 2014.

For Petitioners : Mr.S.Rajendran
For Respondents : Mr.R. Rajasekaran
for RR1 to 3
No appearance for RR4 and 5

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 24.06.2014 passed by the learned XVII Assistant Judge, City Civil Court, Chennai in I.A. No.4804 of 2014 in O.S. No.983 of 2014.

Brief facts leading to the filing of the instant Civil Revision Petition under Article 227 of the Constitution of India.

2. The petitioners are the defendants 3 to 6 in the suit O.S. No.983 of 2002 filed by the respondents No.1 to 3. Originally, the suit was filed by the respondents 1 to 3 against the Chief General Manager, Chennai Telephones and the Welfare Officer, Chennai Telephones, Chennai, seeking for a declaration that the respondents No.1 to 3 are the sole legal representatives of the deceased C.Mani as they are his wife, son and daughter respectively. Thereafter, the petitioners, who also claimed to be the Legal Representatives of Late C.Mani were impleaded in the suit by the order of the Trial Court and they were

added as defendants 3 to 6 in the suit O.S. No.983 of 2002. While the suit was in the stage of trial, the respondents 1 to 3, who are the plaintiffs in the suit filed I.A. No.4804 of 2014 in O.S. No.983 of 2002 under Order VII Rule 14 (3) CPC seeking permission of the Trial Court to receive the documents viz., a) Family Photograph and b) Transfer Certificate to enable them to mark them as exhibits. It is stated in the affidavit filed in support of I.A. No.4804 of 2014 that the defendants 1 and 2 have illegally released the family pension to the 3rd defendant which necessitated them to file the suit for declaration as the petitioners are the only legal heirs of the deceased C. Mani. It is also stated that during the cross examination of PW1 (1st plaintiff), there was a suggestion put by the respondents Nos.3 to 6 that the father's name of the 2 and 3rd petitioners differs in the certificate which was produced by the defendants during the course of trial. Therefore, they have pleaded in the affidavit filed in support of I.A.No.4804 of 2014 that the documents namely a) Family photograph and (b) Transfer certificate which disclose the name of the second and third plaintiffs' father as Mani are required to be marked as Exhibits for the purpose of proving their case.

3. A counter affidavit was also filed by the respondents 3 to 6 in I.A. No.4804 of 2014, wherein they have stated that the documents

sought to be marked by the petitioners are only to fill up the lacuna in the suit. They have further stated that during the cross examination, it was admitted by the 1st respondent / 1st plaintiff that in the Birth Certificate of Ayyappan (2nd respondent / 2nd plaintiff), his father's name was mentioned as Anand and the same was changed later, prior to the filing of the suit. It has also been stated in the counter affidavit that the 1st respondent / 1st plaintiff admits in her cross examination that she applied for change of father's name in the Birth Certificate of Ayyappan, only prior to the filing of the suit.

4.By the order dated 24.06.2014, the learned XVII Assistant Judge, City Civil Court, Chennai allowed I.A. No.4804 of 2014 filed by the respondents 3 to 6 observing that excepting the objections of the respondents 3 to 6 that the photographs without negative cannot be marked and the Transfer Certificate is not a genuine one, they have not raised any serious objection for allowing the I.A. No.4804 of 2014. Accordingly, the Trial Court has allowed I.A. No.4804 of 2014 in the interest of justice to give an opportunity to the respondents Nos.3 to 6 to put forward their case, which will not prejudice the rights of the petitioners /defendants, since the petitioners / defendants can always raise objections on the veracity and admissibility of the documents

during the cross examination of the respondents witness. Aggrieved by allowing of I.A. No.4804 of 2014 in O.S. No.983 of 2002, the instant Civil Revision Petition has been filed under Article 227 of the Constitution of India, by the petitioners, who are the defendants 3 to 6 in the suit.

5. Heard Mr.S. Rajendran, learned counsel for the petitioners and Mr.R. Rajasekaran, learned counsel for the respondents 1 to 3. Despite service of notice on the 4th and 5th respondents and their names, having been printed in the cause list today, no one has entered appearance on their side.

Discussion :

6. The suit has been filed by the respondents 1 to 3/ plaintiffs against the petitioners / defendants 3 to 6 as well as Chennai Telephones, who are defendants 1 and 2, for declaration that they are the legal representatives of the deceased C. Mani. The same has been disputed by the petitioners / defendants 3 to 6, who claim to be the Legal Representatives of the deceased Late C. Mani.

7. The 1st respondent / 1st plaintiff claims that she is the legally

wedded wife of Late C. Mani, whereas the 1st petitioner, who is the 3rd defendant in the suit claims that she is the legally wedded wife of Late C. Mani. This being the case, the documents sought to be marked as Exhibits by the respondents 3 to 6 viz., a) Family Photograph, which admittedly is a group photo of Late C. Mani as well the 1st plaintiff and another child and b) Transfer Certificate, which discloses the name of Late C. Mani may be relevant documents as both of them are connected with Mani only. The 1st respondent / 1st plaintiff and 1st petitioner / 3rd defendant both claim that Late C. Mani is their husband. This being the case, this Court is of the considered view that the documents which is sought to be received as Exhibits are relevant for adjudicating the dispute between the parties as the relief sought for in the suit is for a declaration that the respondents 1 to 3 / plaintiffs are the legal heirs of deceased C. Mani, which is disputed by the petitioners / defendants 3 to 6, who claim to be the legal representatives of Late C. Mani.

8. The Trial Court after considering these facts has rightly come to the conclusion that documents sought to be marked are relevant documents. The Trial Court has allowed the application only in the interest of justice and to give opportunity to the respondents/ plaintiffs

1 to 3 to put forth their case, which will not prejudice the right of the petitioners / defendants 3 to 6, as they can raise their objections, if any available to them, while cross examining the witnesses of the respondents 3 to 6, during trial. Hence, this Court does not find any infirmity in the order passed by the Trial Court. Accordingly the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

16.07.2019

Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
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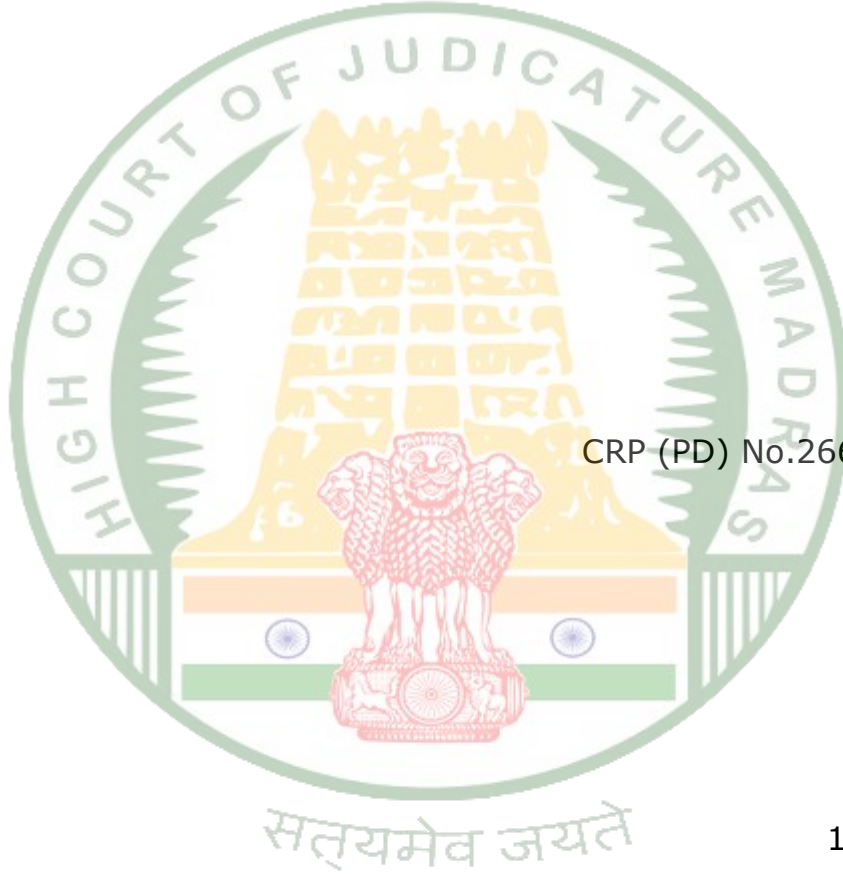


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ABDUL QUDDHOSE, J.

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To :
The XVII Assistant Judge,
City Civil Court,
Chennai.



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