

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (PD)No.2674 of 2014

and

MP No.1 of 2014

N. Jayachandran

... Petitioner

versus

V. Unnamalai Achi

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 07.10.2013 made in I.A. No.69 of 2013 in O.S. No.7810 of 2010 on the file of the XV Additional City Civil Judge, Chennai.

For Petitioner : Mr.A. Vikash
for Ms.Hema Srinivasan

For Respondent : Mr.K. Newlin Frederick
for M/s.A.R. Karunakaran

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 07.10.2013 passed by the learned XV Additional Judge, City Civil Court, Chennai in I.A. No.69 of 2013 in O.S. No.7810 of 2010.

Brief facts leading to the filing of the instant Civil Revision

Petition, filed under Article 227 of the Constitution of India.

2. The petitioner is the second defendant in the suit in O.S. No.7810 of 2010. The respondent is the plaintiff. The respondent filed a suit for recovery of a sum of Rs.21,96,161/- together with interests and costs from the defendants. According to the respondent, the defendants are the legal representatives of the deceased M.Nilakandan, who had borrowed money from the respondents and subsequent to his death, the defendants were also paying the instalment amounts to the respondent. A written statement was also filed in the suit by the defendants and the petitioner is the second defendant in the said suit. He is the son of late M.Nilakandan to whom the respondent had allegedly lent money originally. When the suit was posted for examination of the defendants, the petitioner / second defendant filed I.A. No.69 of 2013 in O.S. No.7810 of 2010, seeking permission of the Court to permit him to file the following documents

:-

a) Notice of demand under the Wealth Tax Act issued to M.Nilakantan, dated 30.03.1987.

(b) Statement of assets and liabilities of M.Nilakantan on date of his death (21.08.1988) certified by Chartered Accountant. The petition was filed under Order 14 read with Section 151 of the Code of Civil Procedure.

3. As seen from the affidavit filed in support of I.A. No.69 of 2013, it has been stated by the petitioner/ second defendant that since the suit has been filed for recovery of money and no personal decree has been sought for and the decree has been sought for only to pay the suit claim of Rs.21,96,161/- from and out of the estate of the deceased M.Nilakantan. It has also been stated that the documents that have been enclosed along with the affidavit are necessary for the petitioner / second defendant for the purpose of establishing that they are not liable to pay the suit claim as the money was borrowed only by their father late M.Nilakantan. A categorical stand has also been taken by the petitioner / second defendant as well as the remaining defendants in their written statement, that they are not liable to pay the suit claim as the said money was borrowed even according to the petitioner only by their father M.Nilakantan. A counter affidavit was also filed by the respondent in I.A. No.69 of 2013 stating that the documents required to be marked as Exhibits by the petitioner are totally irrelevant for the purpose of deciding the suit. According to them, the application filed by the petitioner is premature, misconceived and can only be filed at the stage of execution. It is also stated in their counter affidavit that the estate of the deceased is not

germane to the above suit, which is only for an adjudication of the respondent / plaintiff's claim against the defendants.

4. By order dated 07.10.2013, the learned 15th Additional Judge, City Civil Court, Chennai in I.A.No.69 of 2013, dismissed the application by accepting the statement made by the respondent / plaintiff that the documents sought to be marked as Exhibits by the petitioner are irrelevant for the purpose of adjudicating the suit. Aggrieved by the order dated 07.10.2013, the instant Civil Revision Petition has been filed by the second defendant, who filed I.A. No.69 of 2013.

5. Heard Mr.A. Vikash, learned counsel representing the counsel for the petitioner and Mr.K.Newlin Frederick, learned counsel for the respondent.

6. Admittedly, the suit O.S. No.7810 of 2010 has been filed by the respondent against the defendants for the recovery of money of a sum of Rs.21,96,161/- from and out of the estate of the deceased M.Nilakandan together with interests and costs. As seen from the prayer, the recovery of money has been sought for by the respondent

only from and out of the estate deceased M.Nilakantan, who had allegedly borrowed money from the respondent. The petitioner / second defendant as well as the remaining defendants in the suit have categorically pleaded in their written statement that they never borrowed any money from the respondent / plaintiff and they have also pleaded that for the liability of their father M.Nilakantan, who had allegedly borrowed money from the respondent, they cannot be held liable for the suit claim. The documents intended to be marked as Exhibits by the petitioner in I.A. No.69 of 2010 are as follows :-

a) Notice of demand under the Wealth Tax Act issued to M.Nilakantan, dated 30.03.1987.

(b) Statement of assets and liabilities of M.Nilakantan on date of his death (21.08.1988) certified by Chartered Accountant. The petition was filed under Order 14 read with Section 151 of the Code of Civil Procedure.

7. The above mentioned documents pertaining to the notice of demand issued to M.Nilakantan the petitioner / second defendant's late father and the other documents is the statement of assets and liabilities of M.Nilakantan on date of death (21.08.1988) certified by the Chartered Accountant. The documents sought to be marked as Exhibits are certainly relevant documents, since a categorical stand has been taken by the petitioner as seen from the written statement

as well as in the affidavit filed in support of I.A. No.69 of 2013 that the defendants never borrowed money from the respondent and for the alleged loan availed by M.Nilakantan, their late father, they cannot be held liable. This being the case, the documents referred to above are crucial for the purpose of deciding as to whether the petitioner/ second defendant as well as the remaining defendants are personally liable for the suit claim. However, the Trial Court has erroneously dismissed the application viz. I.A. No.69 of 2013 accepting the stand taken by the respondent that they are irrelevant documents.

8. For the foregoing reasons, this Court is of the considered view that the impugned order will have to be set aside. In the result, the impugned order dated 07.10.2013 made in I.A. No.69 of 2013 in O.S. No.7810 of 2010 is hereby set aside and the Civil Revision Petition is allowed. However, in view of the long pendency of the suit, this Court directs the Trial Court to dispose of the suit within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

10.07.2019

Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
vsi2

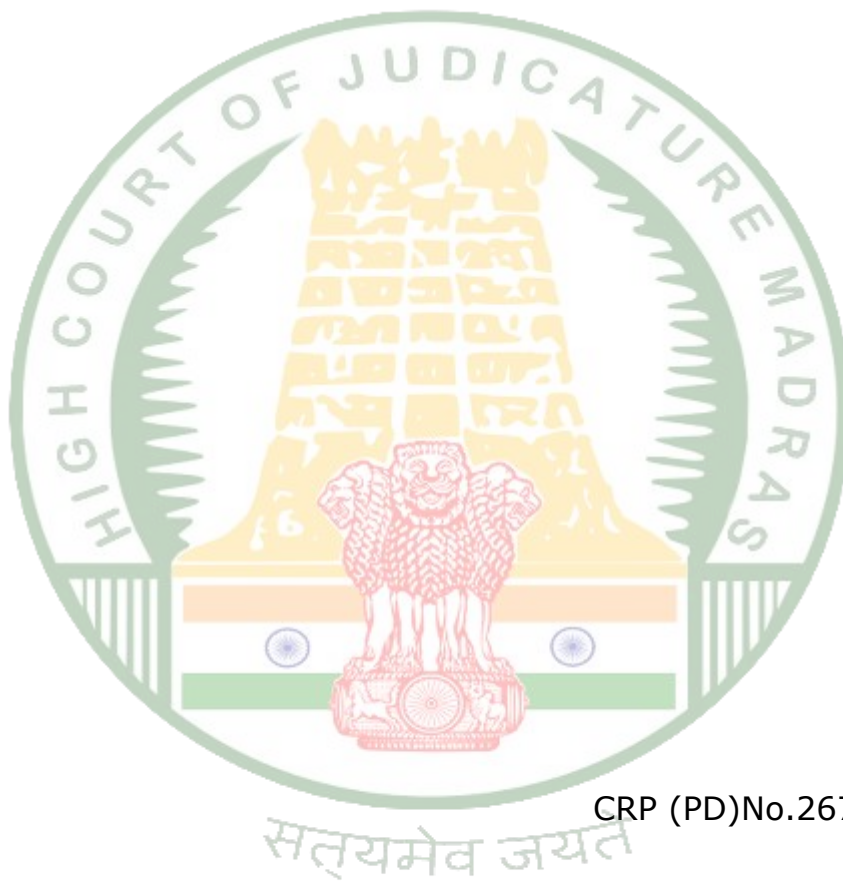
To
The XV Additional City Civil Judge,
Chennai.



WEB COPY

ABDUL QUDDHOSE, J.

vsi2



CRP (PD)No.2674 of 2014

WEB COPY

10.07.2019