

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2019

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (NPD) No.3016 of 2014

and

MP Nos.1 and 2 of 2014

1. M.Manimegalai
2. D. Mani ... Petitioners

versus

1. Chellammal
2. The Assistant Executive Engineer
Tamil Nadu Electricity Board,
K.K.Nagar,
Chennai - 78.
3. The Tamil Nadu Slum Clearance Board,
Rep. By its Chairman,
Kamarajar Salai,
Chennai - 600 005. ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India as against the judgment and decretal order dated 21.04.2014 passed by the learned XVII Additional Judge, City Civil Court, Chennai (Appellate Court), in C.M.P. No.99 of 2013 in A.S. No.335 of 2012 against O.S. No.2351 of 2005.

For Petitioners : Mr.T.Velumani
For Respondents : Mr.S. Sadasharam for R1
For R2 - No appearance
Mr.B.S.Sundaramoorthi for R3 R3

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 21.04.2014 passed by the learned XVII Additional Judge, City Civil Court, Chennai in CMP No.99 of 2013 in A.S. No.335 of 2012.

Brief facts leading to the filing of the instant Civil Revision**Petition :-**

2. The petitioners are the defendants in the suit O.S. No. 2351 of 2005 on the file of the VI Assistant Judge Court, City Civil Court, Chennai. The suit was filed originally by the 1st respondent against the petitioners as well as the Tamil Nadu Electricity Board, Chennai. In the suit, Tamil Nadu Slum Clearance Board was made as the 4th defendant pursuant to the order made by this Court in CRP No.2520 of 2009.

3. The suit was filed by the 1st respondent seeking for a direction to direct the petitioners to quit and deliver vacant possession of the suit schedule property. The first respondent claimed that she is the absolute owner of the suit schedule property as she has paid the

entire sale consideration to the Tamil Nadu Slum Clearance Board as per the allotment order issued by them in her favour. The petitioners contested the said suit by filing a written statement. The suit was decreed in favour of the first respondent after contest by the petitioners. The first petitioner is the daughter of the first respondent and the second petitioner is her son-in-law. Aggrieved by the judgment and decree, dated 23.04.2012 passed in favour of the first respondent in O.S. No.2351 of 2005, the petitioners filed an appeal before the XVII Additional Judge, City Civil Court, Chennai in A.S. No.335 of 2012. Pending disposal of the appeal, the petitioners filed CMP No.99 of 2013 in A.S. No.335 of 2012 under Order XLI Rule 27 CPC, seeking permission of the lower appellate Court to receive the additional documents viz., a) Registered document No.5099 of 2007 (b) Document No.5100 of 2007 and (c) copy of the plaint filed by the 1st respondent in the Sub Court, Madurantakam and also sought for permission to examine the second petitioner and give evidence before the Court.

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4. A counter affidavit was also filed by the first respondent in CMP No.99 of 2013 in A.S. No.335 of 2012, wherein, she has reiterated that she is the absolute owner of the suit schedule property

and has also stated that the petitioners have filed the appeal only with the malicious motive to protract the proceedings and to continue to occupy the suit schedule property in question viz., an extent of 80 sq. ft of land. It is the case of the first respondent that the petitioners do not have any right whatsoever in respect of the said 80 sq. ft. of land. Further, she has stated that since the judgment and decree passed in O.S. No.1094 of 2002 and O.S. No.3502 of 2002, which were filed by the petitioners and the first respondent respectively have become final, the findings in those suits are binding on the petitioners and now the petitioners cannot re-agitate the same in the suit filed by the first respondent/plaintiff in O.S. No.2351 of 2005, which is the subject matter of the appeal in A.S. No.335 of 2012. The first respondent / plaintiff has also pleaded in her counter affidavit that the petitioners have got no right to invoke Order XLI Rule 27 CPC, as the documents, which they want to be marked, are irrelevant documents.

5. By order dated 21.04.2014, the learned XVII Additional Judge, City Civil Court, Chennai dismissed CMP No.99 of 2013 in A.S. No.335 of 2012. Aggrieved by the dismissal of CMP No.99 of 2013 in A.S. No.335 of 2012, the instant Civil Revision Petition has been filed under Article 227 of the Constitution of India.

6. Heard Mr.T. Velumani, learned counsel for the petitioner;

Mr.S.Sadasivam, learned counsel for the 1st respondent and Mr.B.S.Sundaramoorthi, learned counsel for the 3rd respondent. Despite service of notice on the second respondent, and their name having been printed in the cause list, no one has entered appearance on the side of the second respondent.

7. The learned counsel for the petitioners submits that the documents which are sought to be marked by the petitioner under Order XLI Rule 27 are relevant documents. According to him, the documents will establish the case of the petitioners that only out of joint family funds, the suit schedule property was purchased in the name of the first respondent/plaintiff who is the allottee from the Tamil Nadu Slum Clearance Board. Further, he would contend that while selling the property at Madurantakam Village, which was jointly held, there was mutual agreement amongst the family members that the suit schedule property which is the subject matter of the suit O.S No.2351 of 2005 shall be shared equally among the family members. According to him, only in such circumstances, the petitioners were constrained to seek permission of the lower appellate Court under Order XLI Rule 27 CPC to receive the sale deed, which was jointly executed by the first respondent/plaintiff as well as the petitioners' in favour of a 3rd party, by which a sum of Rs.9,00,000/- was paid to the

first respondent / plaintiff towards her share. He also submitted that the other documents viz., a copy of the plaint filed in a partition suit between the petitioners and the first respondent is also a relevant document for the purpose of establishing the petitioners' defence in the suit in O.S. No.2351 of 2005.

8. Per contra, learned counsel for the first respondent/plaintiff would submit that the first respondent/plaintiff is the absolute owner of the suit schedule property including the extent of 80 sq. ft. which is in the possession of the petitioners. He would contend that only to protract the proceedings and only to protect their unlawful possession, the application has been filed by the petitioners under Order XLI Rule 27 CPC as the said documents are irrelevant documents and no way concerned with the suit schedule property.

Discussion :

9. Order XLI Rule 27CPC reads as follows :

27. Production of additional evidence in Appellate Court

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if -

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

10. As seen from Order XLI and Rule 27 CPC only under three circumstances, the said application can be entertained by the appellate Court.

(a) The Trial Court refused to admit evidence which ought to have been admitted.

(b) The parties seeking to produce additional evidence establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not after the exercise of due diligence be produced by him at the time when the

decree, appealed against was passed.

(c) The appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause.

11. In the instant case, the documents which the petitioners propose to mark as Exhibits are no way connected with the suit schedule property and they want to rely on the documents to show that another property was jointly sold by the petitioners' and the first respondent. The reason given by the petitioners in the affidavit filed in support of the Order XLI Rule 27 application will not come within its purview as the documents sought to be marked are irrelevant documents not material to the facts in issue in the case.

12. Further, in the written statement filed in the suit O.S. No.2351 of 2005, filed by the first respondent, the petitioners have not pleaded that the sale deed in respect of Madurantakam property has a bearing for the decision to be rendered in the suit. It is only for the first time in the appellate proceedings initiated by the petitioners in A.S. No.335 of 2012, the petitioners have come forward with this plea that the first

respondent after the sale of the property at Madurantakam village jointly held by her as well as the petitioners after the sale of the said property and after mutual discussion accepted that the suit schedule property in O.S. No.2351 of 2005 was purchased only out of the common funds available with the petitioners as well as the first respondent.

13. As seen from Order XLI Rule 27 CPC, due diligence is required for the purpose of entertaining an application under Order XLI Rule 27 CPC. In the instant case, even without a pleading in the written statement filed in the suit O.S. No.2351 of 2005, in the appellate proceedings, the petitioners have filed the application under Order 47 Rule 27 CPC seeking permission of the appellate Court to receive certain documents which in the considered view of this Court are irrelevant for the purpose of adjudicating the dispute between the parties.

14. This Court has also perused the impugned order. The Court below while dismissing the application under Order XLI Rule 27 CPC has observed that the petitioners have not substantiated the reasons for not marking the said documents during the trial process, which

were available even during the year 2007. The lower appellate Court has also observed that the petitioners have not stated in their affidavit as to how the documents will help the petitioners case. The Court below has rightly observed that the prayer sought for in the petition filed under Order XLI Rule 27 CPC cannot be entertained at the appellate stage, when the said documents are irrelevant ones. This Court is in agreement with the view taken by the lower appellate court and do not find any merit in the Civil Revision Petition. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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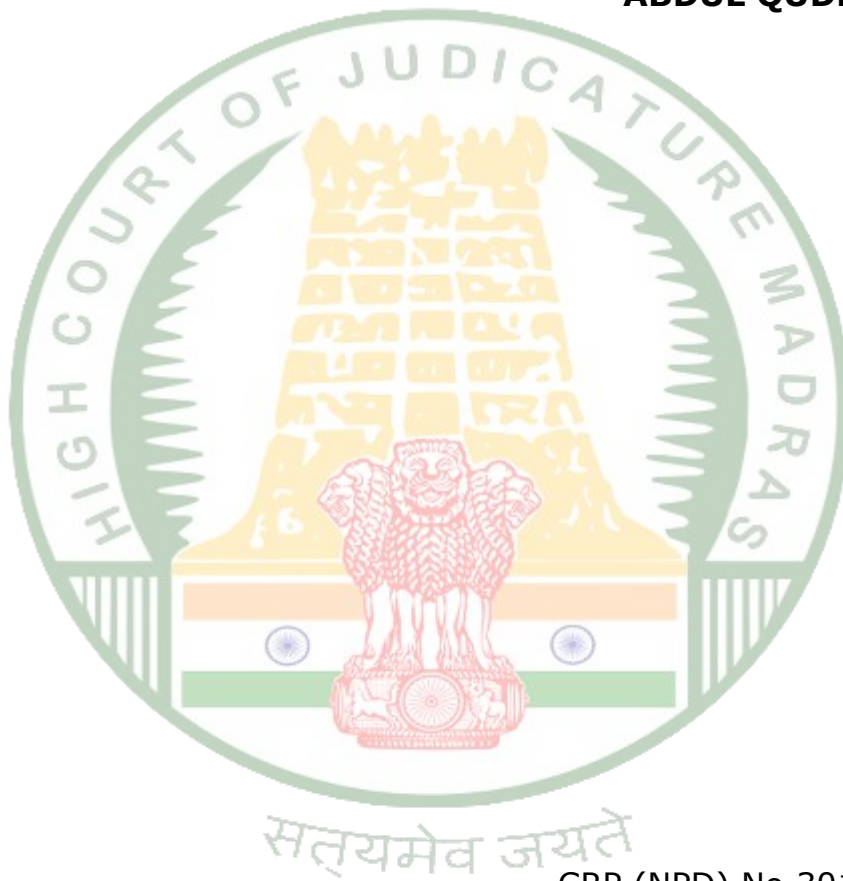
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ABDUL QUDDHOSE, J.

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