

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

O.S.A. No. 392 of 2018
and
C.M.P.No. 17765 of 2018

P.Chokkammal (Died)
P.Kumar
P.Ramesh
...Appellants/Defendants

Vs.

1. P.Chandrasekar
2. R.Jagathi
3. M.Jamuna
... Respondents/Plaitiffs

Prayer: Appeal filed under Order 36 Rule I of O.S. Rules r/w
Clause 15 of the Letter Patent against the order dated
11.09.2018 made in Application No.6065 of 2018 in C.S.No.653 of
2011.

Prayer in Application No.6065/18 : Application praying that this
Hon'ble Court be pleased to grant leave to produce the documents
of the defendants set out in the schedule here under as evidence
before this Hon'ble Court.

Prayer in C.S.o.653/11 : 1) To pass a decree allotting 1/6th
share in the suit schedule property by metes and bounds to each
of the plaintiffs; 2) To declare the settlement deed dated 23-1-
2007 in document no.110/2007 in the SRO T.Nagar executed by the
first defendant in favour of the third defendant as null and
viod. 3) to award costs of the Suit.

For Appellants : Mr.K.Shanmugakani

For Respondents: Mr.S.P.Vijayaraghavan
for R2 & R3

JUDGMENT

(Delivered by M.M.Sundresh,J.)

This appeal is preferred against the order of the learned Single Judge, who, declined to grant leave to produce documents sought to be marked by the appellants on the ground that they have been produced belatedly and contrary to Order 8 Rule 1 A of Civil Procedure Code.

2. Learned counsel appearing for the appellants submits that four documents have already been marked through the respondents/plaintiffs. The other documents are nothing but the documents in support of the contentions raised in the written statement. These documents are the extracts from survey land register, certificate of registration, copies of the bank pass book, etc. Learned counsel also submitted that two more documents are sought to be marked viz., (i) Agreement of sale, dated 19.05.1952 and (ii) Will executed by Palani Achari dated 01.10.1986. Therefore, the order of the learned Single Judge requires interference, since what the appellants seek is only marking of those documents.

3. Learned counsel appearing for respondents 2 and 3/plaintiffs submits that it is true that the four documents have already been marked through the respondents/plaintiffs. However, there is no specific reference to the other documents in the written statement filed. He further submits that in view of the aforesaid aspect coupled with the scope of Order 8 Rule 1A C.P.C., the order of the learned Single Judge does not require any interference.

4. The Code is substantial and procedural in nature though certain provisions have got substantivity in them. In the case on hand, four documents have already been marked through the respondents/plaintiffs. The copies of these four documents the appellants seek to mark, for which, there cannot be any objection. In fact, the suit itself is filed seeking to set aside the settlement deed executed by placing a certified copy, which is at best, a secondary evidence, which is not required to be gone into, in view of the marking sought to be made by the appellants by producing the originals. Thus, in our considered view, this will only help the case of the respondents/plaintiffs to go into the merits of the case. The documents sought to be marked viz., agreement of sale dated 19.05.1952 and Will dated 01.10.1986, in our considered view, cannot be marked. These are the two unregistered documents which are sought to be marked for the first time for which also there is no reason given in the affidavit filed in support of the application. Therefore, to

that extent, we concur with the reasoning of the learned Single Judge. However, the other documents are incidental documents apart from documents already marked. These documents will have to be seen with the averments made in the written statement. In the written statement, it is not necessary that each and every document will have to be mentioned with specific reference. Order 8 Rule 1A speaks about the duty of the defendant to produce the document for which the application has been filed. While dealing with the documents sought to be marked, the Court has to be liberal as the defendant seeks to substantiate his or her case through those documents. After all, marking per se is different from admissibility, relevancy and proof.

6. In our considered view, the learned single Judge has not taken into consideration the power available under Order 9 Rule 8 of the O.S. Rules. In such view of the matter, we are of the view that the order of the learned Single Judge requires interference insofar as the documents except document Nos. 1 and 10 dated 19.05.1952 and 01.10.1986 are concerned. Thus, the other documents are required to be marked subject to the relevancy, admissibility and proof.

6.This Original Side Appeal stands allowed to the extent as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

mmi/ssm

To

The Sub Assistant Registrar, Original Side, High Court, Madras.

+1cc to Mr.K.Shanmugam, Advocate SR.No.20799

+1cc to Mr.S.P.Vijayaraghavan, Advocate SR.No.20785

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SKV(CO)
GMY(03/04/2019)