



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.08.2019
CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

C.R.P. (PD) (MD).No.1139 of 2011
and M.P. (MD).No.1 of 2011

WEB COPY

1.N.Thankavel Nadar (Died)
2.T.Retnasamy
3.Sooriyakaladevi
4.T.Chenthilkumar
5.Shanthi
6.Panchavarnam
7.R.Sivalingam ... Petitioners/Petitioners/Plaintiffs
8.Rajammal
9.Vijayakumar
10.Nageswari ... Petitioners

(Petitioners 2 to 4 are recorded as legal heirs of deceased 1st petitioner and petitioners 8 to 10 are also brought on record as Legal heirs of deceased 1st petitioner vide order dated 22.02.2016 in C.M.P. (MD).No.740 of 2016 and in CRP(MD)No.1139/2011)

Vs.

B.Harikesavan ... Respondent/Respondent/2nd Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order made in I.A.No.585 of 2010 in O.S.No.180 of 2009 on the file of the District Judge, Kanyakumari at Nagercoil, dated 18.04.2011.

For Petitioners : Mr.M.P.Senthil
For Respondent : Mr.L.George Paul Anto

ORDER

This civil revision petition is filed by the plaintiffs in the suit in O.S.No.180 of 2009 on the file of District Court, Nagercoil.

2.The revision petitioners filed a suit in O.S.No.180 of 2009 for specific performance of an oral agreement of sale alleged to have been entered into between the first respondent and the plaintiff. The suit was contested by the second defendant in the suit. It is the specific case of plaintiff that the suit properties originally belonged to one Lakshmi ammal and she executed a Will in favour of first defendant. Though the plaintiff set up title on the basis of the Will alleged to have been executed by Lakshmi ammal, the second defendant raised an issue with regard to the genuineness and validity of the Will.



3. During the pendency of the suit, the plaintiffs preferred an interlocutory application in I.A.No.585 of 2010 to direct the second defendant in the suit to produce the document namely the original registered power of attorney deed, dated 06.11.2007 in favour of one B.Hari Kesavan. The said application was dismissed by the lower court on the ground that the respondent/second defendant specifically denied the existence of the document which was sought to be produced in the petition. Since the respondent denied and disputed the existence of the power of attorney deed, the Court dismissed the petition holding that the respondent cannot be directed to produce the document when its existence is denied.

4. The learned counsel appearing for the revision petitioner submitted that the lower Court dismissed the petition filed by the revision petitioner accepting the version of the respondent as if no such document dated 06.11.2007 was executed, ignoring the fact that the earlier power of attorney is a registered document and the petitioners have also furnished the registration number of the document. The learned counsel further submitted that the inconsistent stand taken by the respondent would only show the conduct of respondent who is second defendant in the suit in colluding with the defendants and that the petitioner should be given a fair opportunity to prosecute the case. Since the conduct of the defendant in the suit for specific performance is also important, learned counsel for the petitioner submitted that the lower Court dismissed the application without considering the scope of litigation as well as relevancy and importance of the document which is sought to be produced.

5. Having regard to nature of order by the lower Court dismissing the interlocutory application filed by the revision petitioner, this Court is unable to find any ground or sound reason to sustain the order of lower Court. First of all, the order of lower Court is materially irregular, ignoring the vital fact. The application filed by the revision petitioner is only to direct the production of a registered document by one of the party who is stated to be in possession. Merely because the respondent disputed the existence of the document, the lower Court cannot ignore the realities especially when the existence of the registered document stands proved.

6. Accordingly, this civil revision petition is allowed and the order passed in I.A.No.585 of 2010 on the file of the District Judge, Nagercoil, dated 18.04.2011 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //



To

1. The District Judge,
Kaniyakumari at Nagercoil.

2. The Section Officer,
V.R.Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.L.GEORGE PAUL ANTO, Advocate (SR-82089[F] dated
16/08/2019)

+1 CC to Mr.M.P.SENTHIL, Advocate (SR-82133[F] dated 19/08/2019)

C.R.P. (PD) (MD) .No.1139 of 2011
14.08.2019

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