



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 13.12.2019
CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

C.R.P. (PD) (MD)No.2288 to 2290 of 2013

and

M.P. (MD)No.1 of 2013

1.Pancharathinam
2.Sathish Kumar
3.Nithya
4.Raavichandran

... Revision Petitioners in all
petitions/Defendants

Vs.

Sethu

... Respondent in all petitions/
Plaintiff

PRAYER: These Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 03.10.2013 made in I.A.No.914 to 916 of 2013 in O.S.No.600 of 2008 on the file of the I Additional District Munsif Court, Thiruchirappalli and allow these Civil Revision Petitions.

For Petitioners in all petitions : M/s.J.Maria Roseline

For Respondent in all petitions : Mr.R.Sundar Srinivasan
Mr.S.Manikandan

COMMON ORDER

These Civil Revision Petitions have been filed by the Revision Petitioners / Defendants in O.S.No.600 of 2008, on the file of the I Additional District Munsif Court, Thiruchirappalli, challenging the orders, dismissing the I.A.Nos.914 to 916 of 2013.

2.The original suit was filed for partition by the respondent / plaintiff claiming that the suit property is a joint acquisition of himself and his brother Chinnaiyan / 1st defendant. Pending suit, the 1st defendant died and his legal representatives were impleaded as parties. The legal representatives of the 1st defendant resisted the suit contending that the suit property absolutely belonged to the 1st defendant by virtue of purchase under a sale deed, therefore, the plaintiff has no right to claim partition. When the suit was posted for arguments, after closing of defendants evidence, the defendants came up with these three applications seeking to re-call D.W.1 and permit them to mark the sale deed, dated 25.02.2008, executed pursuant to the decree in



O.S.No.3570 of 2004. These applications were resisted by the respondent / plaintiff contending that there is no reference to the sale deed, dated 25.02.2008 in the written statement filed by the defendants in the suit.

3. The learned I Additional District Munsif, Thiruchirappalli dismissed these applications on the finding that the documents cannot be received in evidence, unless the reason, for non-production as required under Order 8 Rule 1 (3) of Code of Civil Procedure, is assigned. Aggrieved by the said order, the defendants have come up with these Civil Revision Petitions.

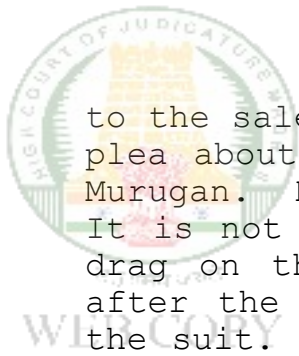
4. I have heard Mrs.J.Maria Roseline, learned Counsel appearing for the petitioners and Mr.S.Manikandan, learned Counsel appearing for the respondent.

5. Mrs. J.Maria Roseline, learned Counsel appearing for the petitioners would contend that the Court below was not right in dismissing these applications, thereby denying the opportunity to the defendants to lead evidence. She would also submit that proper reasons have been assigned for non-production of the documents earlier in point of time. She would also point out that there is a specific pleading in the written statement that the sale deed has been executed by one Marimuthu and Murugan in favour of the 1st defendant, Chinnaiyan.

6. Contending contra, Mr.S.Manikandan, learned Counsel appearing for the respondent would submit that in terms of Order 8 Rule 1 (3) of Code of Civil Procedure, if a party to the proceedings relies upon a document, the same shall be produced along with the plaint or written statement. If the defendants fail to produce such documents at the time of filing the written statement, it can be received at a later point of time, if a valid reason is shown for non-production. The Law requires, if any documents filed at a later point of time, the party should give proper and valid reasons for non-production of the document earlier in point of time. According to the learned Counsel appearing for the respondent, such reason is totally absent in the affidavit filed in support of these applications.

7. I have considered the rival submissions.

8. In the affidavit filed in support of the application in I.A.No.916 of 2013, it is stated that the document was omitted to be produced due to over-sight and it being a relevant and vital document namely, sale deed, dated 25.02.2008 in the name of the 1st defendant. If the document is not allowed to be marked, prejudice will be caused. It is also stated that the document came to be executed pursuant to the decree in O.S.No.3570 of 2004. The fact that the sale deed has been executed on 25.02.2008 has been denied by the respondent. No doubt, the plaint does not make any reference



to the sale deed. But in the written statement, there is a specific plea about the sale deed having been executed by one Marimuthu and Murugan. Hence, there will be no prejudice caused to the plaintiff. It is not as if these applications have been filed with a view to drag on the proceedings. These applications have been filed soon after the defendants evidence closed, but before the arguments in the suit. Hence, I find that it will be too harsh to reject these applications and shut out the evidence on the side of the defendants. Therefore, in my considered opinion, the learned I Additional District Munsif, Thiruchirappalli failed to exercise the jurisdiction vested under Order 8 Rule 1 (3) of Code of Civil Procedure.

9. In view of the above, the orders of the learned I Additional District Munsif, Thiruchirappalli dismissing the I.A.Nos.914 to 916 of 2013, are set aside. These Civil Revision Petitions stand allowed. The evidence of D.W.1 is reopened, D.W.1 is recalled and the defendants are permitted to produce the Sale deed, dated 25.02.2008 in evidence. No costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

The I Additional District Munsif Court,
Thiruchirappalli

+1 CC to M/s.J.MARIA ROSELINE, Advocate (SR-104957[F] dated 13/12/2019)

+1 CC to Mr.R.SUNDARSRINIVASAN, Advocate (SR-105397[F] dated 17/12/2019)

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MK (20.01.2020) 3P 4C