



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2019

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CRP (MD) .Nos.64 and 126 of 2019 (PD)
and
C.M.P. (MD) .No.310 of 2019
in
C.R.P. (MD) .No.64 of 2019

1.S.Sethupathy Raja
2.Kaliswaran

... Petitioners/Petitioners/
Defendants 11 & 12

Vs .

1. P.Karunanithi
2. p.Muthupandi
3. P.Murugan
4. D.Rajendran
5. D.Pandi Selvam
6. E.M.G.S.Indrani
7. E.M.G.S.Periya Pothirajan
8. E.M.G.S.Chinna Pothirajan
9. E.M.G.S.Arun Pothirajan
10.E.M.G.S.Rajeswari
11.E.M.G.S.Gopalakrishna Pandiyan
12.E.M.G.S.Radhakrishnan
13.E.M.G.S.Muthu Meenakshi
14.Arulappan
15.Subramanian
16.Raja

.. Respondents/Respondents/Plaintiffs

(Respondents 6 to 16 remained exparte before the trial
Court. Hence no notice need be served on these
respondents 6 to 16 herein)

.. Respondents/Respondents/
Defendants1 to 10,13

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 26.11.2018 passed in I.A.Nos.1693 and 1694 of 2018 in O.S.No.254 of 2009 by the District Munsif Court, Melur respectively.

For Petitioners : Mr.S.Ramesh

**COMMON ORDER**

These Civil Revision Petitions have been preferred against the order passed in I.A.Nos.1693 and 1694 of 2018 in O.S.No.254 of 2009.

2.The said two I.As have been filed by the petitioners herein, who are the 11th and 12th defendants. I.A.No.1693 of 2018 has been filed under Section 63 of the Indian Evidence Act, to mark the secondary evidence. In I.A.No.164 of 2018 has been filed under Order 1908 order 8 1a(3) and Section 151 of the Code Civil Procedure to condone the delay in filing a petition to mark the evidence. The respondent No.s 1 to 5 herein, who are the plaintiffs in the suit, claim right over the property, which is very much contested by the defendants and the suit is in the trial stage.

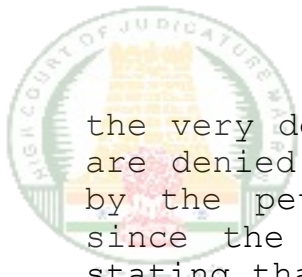
3.In I.A.No.1693 of 2018, the petitioners herein have stated that they have purchased the properties under various sale deeds, after obtaining necessary permission from the competent Court in O.P.No.117 of 1981 and they have produced the fair order copy of the said Original petition, dated 18.11.1981 and the same was marked as Ex.A.23, but, they have not produced the decreetal order. Further stated that the trial Court has not given any permission for alienating of Sy.No.158 and to prove the same, the petitioners herein have filed an application to receive the photo copy of the petition and order in O.P.No.117 of 1981 as the secondary evidence on the side of the defendants and the photo copy would not be admitted in evidence. Since the proceedings of the said O.P., was culminated before 37 years, they could not obtain the certified copy from the Court. Hence, they filed the photo copy of the petition and order in O.P.No.117 of 1981 before the trial Court as secondary evidence.

4.The trial Court after considering the submissions made on both sides and for perusing the available documents on record, has given a finding that the photo copy of the order cannot be marked as a secondary evidence and dismissed the said petition. Against the said order, the present civil revision petition in C.R.P.(MD).No.64 of 2019 has been filed.

5.In I.A.No.1694 of 2018, the petitioners herein contended that the documents which are filed along with the petition are obtained recently and those documents are necessary to prove their case. If those documents were not marked, the petitioners will put in irreparable loss and inconvenience. Therefore, this I.A has been filed to condone the delay in filing the petition to mark the defendants' side evidence and the said I.A was dismissed by the trial Court. Against which, the present Civil Revision Petition in C.R.P.(MD).No.126 of 2019 has been filed.

<https://hcservices.ecourts.gov.in/hcservices/>

6.The contention raised by the petitioners/defendants is that



the very documents, which sought to be marked as secondary evidence are denied by the plaintiffs. However, inspite of the efforts taken by the petitioners, the certified copies could not be obtained, since the trial Court has already returned the copy application stating that it has been destroyed.

WEB COPY

7. In support of his contention, the learned counsel appearing for the petitioner relied upon the judgment of this Court in the case of **THE HOME MISSIONARY SOCIETY OF INDIA V. VEPERY AUXILIARY OF THE HOME MISSIONARY SOCIETY OF INDIA** reported in **2015(1)CTC 187**. He has also relied upon another judgment in the case of **S.SUBRAMANIAN & ANOTHER V. S.T.TAMILARASAN & OTHERS** reported in **2018-4-L.W.369**.

8. On a perusal of the documents, there is no sale deed executed by the Court and if he want to rely upon the said document, the petitioner can very well summon the concerned Officer to examine as witness to speak with regard to the destruction of the said document and only in such circumstances, the said document can be considered by the trial Court, after return made by the concerned Officer stating that the said records are destroyed as per rules, since the O.P was above 20 years.

9. Considering the nature of the suit and the claim made by the petitioners/defendants herein, the petitioners can very well examine the concerned Officer, who made an endorsement regarding the destruction of the records. The trial Court can proceed with the trial, based on the evidence to be given by the concerned Officer.

10. With the above direction, these civil revision petitions are disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

The District Munsif,
Melur.

+1 CC to M/s.V.RAGHAVACHARI, Advocate (SR-48704[F] dated 21/02/2019)

NS

TE : 28/03/2019 : 3P/3C

CRP (MD) .Nos.64 and 126 of 2019(PD) and
C.M.P. (MD) .No.310 of 2019 in
C.R.P. (MD) .No.64 of 2019
20.02.2019