



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 24.04.2019

DELIVERED ON : 30.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No. 2685 of 2015

and

M.P. (MD) No. 1 of 2015

1. Sudalaimuthu

2. Alagammal

.. Petitioners/Petitioners/
Defendants 2 and 3

Vs.

Meenatchi Ammal

.. Respondent/Respondent/Plaintiff

Prayer: This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the order dated 20.07.2015 passed in I.A.No.117 of 2015 in O.S.No.16 of 2001 on the file of the learned District Munsif, Tiruchendur.

For Petitioners	: Mrs.Jeesi Jeeva Priya
	For Mr.G.Aravindhnan
For Respondent	: Mr.N.Dilip Kumar

ORDER

Heard Mrs.Jeesi Jeeva Priya, learned counsel appearing for the petitioners and Mr.N.Dilip Kumar, learned counsel appearing for the respondent.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.117 of 2015 in O.S.No.16 of 2001 dated 20.07.2015 on the file of the learned District Munsif, Tiruchendur.

3.The petitioners 1 and 2 herein are the defendants 2 and 3 and the respondent herein is the plaintiff in the suit. The respondent herein has filed a suit in O.S.No.16 of 2001 for a prayer of declaration of title and for recovery of possession. The petitioners have filed a petition in I.A.No.117 of 2015 for receiving additional written statement. That petition was dismissed by the trial Court. Against the dismissal order, the petitioner has filed the present revision petition.



4. On the side of the petitioners, it is stated that the plaintiff is the sister of the first defendant and the first defendant died and the defendants 2 and 3 are impleaded as the legal heirs of the first defendant. It is stated that the plaintiff is claiming the property by way of gift deed said to have been executed by one Krishnasamy Konar. Only a copy of the gift deed is filed and that only at the time of examination of the plaintiff, the document was marked. At the time of cross examination of P.W.1, the plaintiff traced out the title through an alleged settlement deed. The defendants are having the original settlement deed and also are in possession of the cancellation deed dated 19.10.1992. For eliciting the cancellation of an alleged settlement deed, an additional written statement is necessary. The trial Court dismissed the petition on the sole ground of delay. The reason for the delay is that the suit was dismissed for default. Then it was restored by the plaintiff only in the year 2013. Only after restoration of the suit, P.W.1 was examined and she produced a xerox copy of the document and the delay is not on the part of the defendants.

5. On the side of the petitioners, it is further stated that the trial Court dismissed the petition on the ground that if needed the defendants can file additional documents along with the petition and they cannot file the additional written statement. No new case is being introduced. Without specific denial and without mentioning the cancellation deed, the defendants cannot mark those documents and request the revision to be allowed.

6. On the side of the respondent, it is stated that even in the written statement, the gift deed was denied and now it is claimed that the gift deed is cancelled. The defendants are taking two different views and that there is a delay of 15 years. When the defendants are aware of the cancellation of the settlement deed, they should have mentioned the same in the written statement itself. Only with the motive to drag on the case, the petition to receive additional written statement is filed and prayed the revision to be dismissed.

7. It is seen that both the settlement deed and cancellation deed are registered documents and the plaintiff is claiming title through the settlement deed. The defendants are denying the same as it is already cancelled.

8. In the above circumstances, both deeds are necessary for proper appreciation of the case. It is seen that the case was dismissed for default and then was restored which causes the delay.

9. In the above circumstances, an opportunity for the defendants to be given to deny the title of the plaintiff. Hence, the Civil Revision Petition is **allowed** by setting aside the



order passed in I.A.No.117 of 2015 in O.S.No.16 of 2001 dated 20.07.2015 on the file of the learned District Munsif, Tiruchendur. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

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Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

Mrn

To

1.The District Munsif, Tiruchendur.

+1CC TO MR.N.DILIP KUMAR, Advocate Sr. No. 64786

C.R.P. (PD) (MD) No.2685 of 2015

DB (CO)

TR (14.06.2019) 3P 3C