



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 05.11.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P. (PD) (MD) .No.2462 of 2018

and

C.M.P. (MD) .No.10920 of 2018

S.Saharban

... Petitioner/Petitioner/Petitioner/
Defendant

-Vs-

1. Abdul Wahab

2. Abdul Mutalif

... Respondents/Respondents/Respondents/
Plaintiff

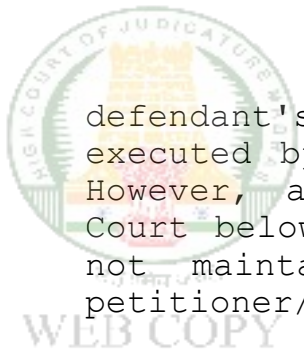
PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to call for the records relating to the impugned petition and order passed in I.A.No.868 of 2018 in I.A.No.446 of 2018 in O.S.No.1004 of 2017, dated 26.09.2018 on the file of the learned II Additional Sub Court, Madurai and set aside the same.

For Petitioner : Mr.N.Satheesh Kumar
For Respondents : Mr.V.P.Rajan

O R D E R

The Civil Revision Petition has been filed challenging the order passed by the learned II Additional Sub Court, Madurai in I.A.No.868 of 2018 in I.A.No.446 of 2018 in O.S.No.1004 of 2017, dated 26.09.2018.

2. The revision petitioner is the defendant and the respondents are the plaintiffs in O.S.No.1004 of 2017. The suit has been filed by the respondents/plaintiffs before the Court below for declaration and permanent injunction against the revision petitioner/defendant. The revision petitioner/defendant has filed an application in I.A.No.446 of 2018 to reject the plaint. During the pendency of the same, the revision petitioner/defendant has also filed an application in I.A.No.868 of 2018, to receive the petition mentioned documents and to mark the same in I.A.No.446 of 2018. In support of the contention of the application to reject the plaint in I.A.No.446 of 2018, the revision petitioner herein has filed four documents ie., (i) Registered Gift Deed dated 24.07.1979, executed by the plaintiffs' father in favour of the second plaintiff, (ii) Registered Gift Deed dated 24.07.1979 executed by the plaintiffs' father in favour of the first plaintiff, (iii) Registered Sale Deed dated 01.07.1982, executed by the first plaintiff in favour of the



defendant's mother and (iv) Registered Sale Deed dated 27.02.1984, executed by the second plaintiff in favour of defendant's mother. However, after considering the submissions of both parties, the Court below has dismissed the application in I.A.No.868 of 2018 as not maintainable. Aggrieved by the said order, the revision petitioner/defendant has filed the present civil revision petition.

3. The contention of the learned counsel for the revision petitioner is that the application in I.A.No.446 of 2018 has been filed seeking rejection of plaint in O.S.No.1004 of 2017, on the ground of suppression of material facts and the same has to be proved only by way of marking documents, otherwise the petition will be dismissed on the ground that no supporting documents are produced to substantiate the case of the petitioner. Further, the revision petitioner/defendant has not filed any written statement and he has also not filed any document in support of his contention. The learned counsel for the revision petitioner/defendant referred the provision under Order 13 Rule 3 of C.P.C., wherein it is stated as follows:

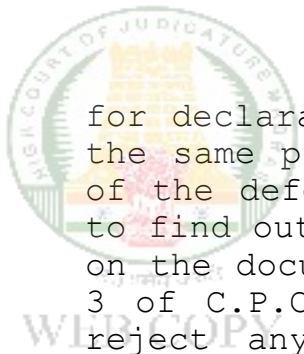
3.Rejection of irrelevant or inadmissible documents.- *The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.*

4. The learned counsel for the revision petitioner further contended that in the present case, admittedly, the gift deeds were executed in favour of the respondents/plaintiffs and the respondents have executed a registered sale deed in favour of the mother of the revision petitioner/defendant and the Court below without considering all these aspects, rejected the application. Hence, the petitioner has filed the present civil revision petition.

5. On the other hand, the learned counsel appearing for the respondents has strongly opposed the contentions raised by the learned counsel for the petitioner, but subsequently, he has no objection to permit the revision petitioner to mark the documents. However, he contended that entire trial needs to be conducted and thereafter the Court will consider the matter and pass final orders.

6. Heard the learned counsel for the petitioner, the learned counsel for the respondents and perused the materials available on record.

7. On perusal of the records, it is seen that originally the property belong to the respondents' father viz., Syed Mohammed and he executed the gift deeds dated 24.07.1979 in favour of the respondents/plaintiffs. Thereafter, the respondents/plaintiffs executed the registered sale deeds dated 01.07.1982 and 27.02.1984 in favour of the mother of the revision petitioner. Now, the respondents/plaintiffs have filed the suit in O.S.No.1004 of 2017



for declaration and permanent injunction against the defendant. But the same property was already sold by the plaintiffs to the mother of the defendant. In such circumstances, it is for the Court below to find out whether there is any excess land available or not, based on the documents filed by the revision petitioner and Order 13 Rule 3 of C.P.C., states that the Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection. The documents needs to be taken on record for the purpose of contesting the application in I.A.No.446 of 2018 seeking rejection of plaint in O.S.No.1004 of 2017. Therefore, this Court do not find any impediment for the Court below to accept the document filed by the revision petitioner. In fact, the additional documents filed by the revision petitioner will be useful for the Court below to decide the application to reject the plaint. Therefore, there is no merit in the order passed by the Court below, hence, this Court is inclined to set aside the same. Accordingly, the order passed by the II Additional Sub Court, Madurai in I.A.No.868 of 2018 in I.A.No.446 of 2018 in O.S.No.1004 of 2017, dated 26.09.2018 is set aside and the Civil Revision Petition is allowed and the II Additional Sub Court, Madurai is directed to allow the revision petitioner/defendant to file the petition mentioned documents in the application in I.A.No.446 of 2018 and thereafter, decide the application in I.A.No.446 of 2018 on merits and taking into consideration the above facts and circumstances of the case and also considering the fact that the suit has been filed in the year 2017, for declaration and permanent injunction, this Court directs the II Additional Sub Court, Madurai to dispose of the suit in O.S.No.1004 of 2017 within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Records)

// True Copy //

Sub Assistant Registrar(CS)

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To

The II Additional Sub Court, Madurai.

+1 CC to M/s.V.P.RAJAN, Advocate (SR-96805[F] dated 07/11/2019)

C.R.P. (PD) (MD) .No.2462 of 2018

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