

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 04.11.2020]

[PRONOUNCED ON : 14.12.2020]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P. PD.No.389 of 2020

A/m Jambukeswarar Thirukoil
Represented by its Executive Officer,
Korattur, Chennai - 80.
Having office at Arulmigu
Thiruvallieswarar Thirukoil,
Padi, Chennai - 50.

... Petitioner/Plaintiff

.. Vs ..

Gandhimathi

... Respondent/Defendant

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decretal Order dated 13.12.2019 in I.A.No.3 of 2019 in O.S.No.180 of 2014, on the file of the II Additional District Judge, Thiruvallur at Poonamallee.

For Petitioner : Mr.Kailasam
for M/s.A.S.Kailasam Associates
For Respondent : Mr.S.Mahimai Raj

ORDER

This Civil Revision Petition is filed by the petitioner-Temple under Article 227 of the Constitution of India, against the fair and decreetal order dated 13.12.2019 passed by the learned II Additional District Judge, Thiruvallur at Poonamallee, in I.A.No.3 of 2019 in O.S.No.180 of 2014.

2. The plaintiff in the said suit is the revision petitioner herein. The revision petitioner/plaintiff has filed the above suit in O.S.No.180 of 2014 before the learned II Additional District Judge, Thiruvallur at Poonamallee, praying for the relief (i) to declare that the plaintiff-Temple is the absolute owner of the schedule mentioned property and the consequential relief to deliver the vacant possession of the said property after demolishing the existing superstructure put up by the defendant/respondent herein and (ii) to grant permanent injunction restraining the defendant or her men or any person claiming through her or under her from any kind of additional or further constructions over the suit property.

3. In the said suit, the respondent herein/defendant has filed written statement stating that the land in S.No.481/1 belonged to herself by way of inheritance. The suit was posted for further evidence on her side and she examined herself as D.W.1 and Tr.Rajkumar was examined as D.W.2. The defendant has further stated that in support of the suit, she has produced the Ambattur Town Survey Field Register Extract dated 09.04.2009 issued by the Zonal Deputy Tahsildar, Ambattur Taluk, in her favour and the same was marked as Ex.B.3 and also produced the Ambattur Town Survey Field Register Extract dated 04.10.2011 issued by the Zonal Deputy Tahsildar, Ambattur to one Smt.Jan Begum and the same was marked as Ex.B.20.

4. The respondent herein/defendant has filed an application before the learned II Additional District Judge, Thiruvallur at Poonamallee, in I.A.No.3 of 2019 under Order XVI Rule 1 CPC r/w. Section 151 CPC to issue Subpeona to Tahsildar, Ambattur Taluk Office, Ambattur, Chennai, for the purpose of giving evidence about the Ambattur Town Survey

Field Register Extract dated 09.04.2009 (Ex.B.3) and Ambattur Town Survey Field Register Extract dated 04.10.2011 (Ex.B.20) and to depose about the factual position available in the records.

5. In the said I.A., the plaintiff-Temple has filed counter affidavit, stating that the revenue documents viz., Ex.B.3 and Ex.B.20 were obtained suppressing the title of the plaintiff-Temple and the documents do not confer any ownership and had not created any right.

6. The learned II Additional District Judge, Thiruvallur, at Poonamalli, taking into consideration the scope of the suit, has allowed the said application in I.A.No.3 of 2019 and hence, aggrieved against the said order, the plaintiff-Temple has preferred this Civil Revision Petition before this Court.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the records.

8. According to the learned counsel for the revision petitioner/plaintiff, subpoena was issued to the revenue authorities in connection with Exs.B.3 and B.20 wherein patta proceedings and transfer of patta proceedings have been effected in respect of the defendant's father, since the revenue authority is having the entire revenue records from the year 1901 and original survey number conducted prior to 1901, all the records to be summoned.

9. This Court finds that the claim of the petitioner's counsel appears to be not only tall claim but also illusory. The suit was filed by the plaintiff-Temple praying for a declaration to declare the title of the Temple in respect of the survey numbers mentioned in the suit property and for recovery of possession from the possession of the defendant.

10. Written statement was filed by the defendant in the suit alleging that there was a regular patta in the name of her father way back 40 years ago and they are in possession and enjoyment of the suit property on their own right. After written statement was filed, issues have

been framed and the plaintiff's side evidence was over. On behalf of the defendant, she examined herself as D.W.1 and also examined one Mr.Rajkumar as D.W.2. During the course of the evidence on the side of the defendant, they have marked Exs.B.3 and B.4 which are Town Survey Registers issued by the Zonal Deputy Tahsildar, Ambattur and Ex.B.20 is the Town Survey Register issued by the said revenue officer. In order to speak about the issuance of revenue records by the revenue authority, the defendant in the suit, the respondent herein has filed an application under Order XVI Rule 1 of CPC r/w. 151 of CPC for issuance of subpoena.

11. An application was filed under Order XVI Rule 1 CPC R/w. Section 151 CPC to issue subpoena to Tahsildar, Ambattur Taluk Office, Ambattur, for the purpose of giving evidence relating to Ambattur Town Survey Field Register dated 09.04.2009 (EX.B.3) and Ambattur Town Survey Field Register dated 04.10.2011 (Ex.B.20).

12. It is to be noted that Rule 74 of Civil Rules of Practice should be read in consonance with Order XVI Rule 2 and 3 of CPC, while

calling upon an official witness to depose about the documents issued by them. Admittedly, the witness mentioned in the petition is Tahsildar of Ambattur Taluk Office. The scope of the subpoena petition is permissible in respect of official witnesses as they were summoned by the Court to place the material facts and evidence in support of the issue involved in this case.

13. In order to prove that the defendant's father himself was granted patta and name has been duly changed in the Register of the land Register by the Revenue Authorities several decades ago, copies were marked as Exs.B.3 and B.20. In order to prove the issuance of revenue records by the Tahsildar, the defendant has rightly filed the application for issuing subpoena to the revenue authorities to depose in connection with Exs.B.3 and B.20. In the subpoena petition, it was specifically mentioned as to the purpose of calling upon the official witness to depose about a particular document said to have been issued by the said office of the revenue department. Now, the petitioner-Temple seeks a prayer that in respect of all the suit properties and its survey numbers, revenue

records spanning about 100 years and more than 100 years to be called for. It is always open to the petitioner-Temple to point out the records which they want to official witness. The petition for issuance of subpoena was filed by the defendant in the suit and she marked revenue records as Exs.B.3 and B.4, land register and patta proceedings and patta transfer proceedings in favour of defendant's father. In this petition, there cannot be any scope for expanding the subpoena, unless the petitioner/plaintiff makes out what is the year which they want or proceedings with reference to which they want to rely. It is always open to the defendant to take subpoena petition, if there be so advised in the manner known to law before the trial Court.

14. After going through the order passed by the learned II Additional District Judge, Thiruvallur, I find that the subpoena petition is just and necessary to depose evidence with regard to Exs.B.3 and B.20 and accordingly, the trial Court has rightly ordered for issue of witness summons to Tahsildar to speak about Exs.B.3 and B.20. When the witness summoned by one party was examined before the Court to prove

certain documents of the defendant, it is always open to the other party to cross-examine the same to disprove the said document when an opportunity of cross-examination is available. It is always open to the petitioner-Temple to contradict or deny the veracity of the documents in the manner known to law and hence, I find that the Civil Revision Petition is totally unwarranted. The order passed by the learned II Additional District Judge, Thiruvallur at Poonamalle, is in consonance with the provisions of Order XVI Rule 1 of CPC r/w. Rule 74 of the Civil Rules of Practice and the reason assigned for issuance of subpoena is perfectly in order and it does not warrant any interference under the revisional jurisdiction. The said order passed by the learned II Additional District Judge, Thiruvallur at Poonamalle, does not suffer from any irregularity or illegality warranting interference in exercise of Article 227 of the Constitution of India and hence, the civil revision petition is liable to be dismissed.

15. In the result, this Civil Revision Petition is dismissed with costs of Rs.1,000/- [Rupees One Thousand only].

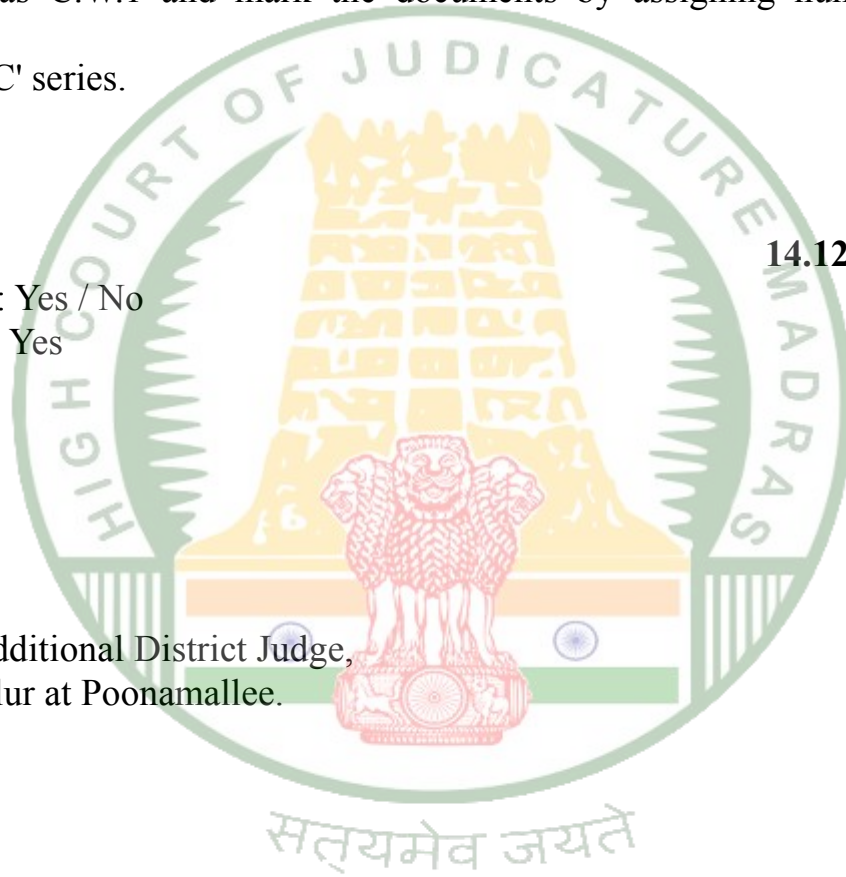
16. As the temple claims right over the property as mentioned in the schedule, the trial Court is hereby required to examine the Revenue Official as C.W.1 and mark the documents by assigning numbers in Exhibit 'C' series.

14.12.2020

Index : Yes / No
Internet : Yes
Jrl

To

The II Additional District Judge,
Thiruvallur at Poonamallee.



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RMT.TEEKAA RAMAN, J.

JRL



Order made in
C.R.P. PD.No.389 of 2020

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