

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.07.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.No.1119 of 2020

in

C.S.No.435 of 2018

Guru Dhananjay

... Petitioner

Vs.

1.Swarna Krishnaswamy

2.K.Subramanian

3.Lakshmi Natarajan

4.Indira Ramakrishnan

5.Hemamalini

6.Estate of K.Bhavatharini

Inter-meddlers by Guru Dhananjay

Old No.3, New No.5, Srinivasa Avenue Road,

Raja Annamalaipuram,

Chennai – 600028.

7.A.Kousalya Merchant

8.Canara Bank
Rep by its Manager,
Mandaveli Branch,
R.K.Mutt Road,
Chennai – 600 028

... Respondents

Prayer: Application filed under Order XIV Rule 8 of the Original Side Rules read with Order VIII Rules 1A(3) and Section 151 of the Code of Civil Procedure praying to permit the applicant to bring on record the Schedule mentioned documents in the present case in C.S.No.435 of 2018.

For Applicant : Mr.H.Karthik Seshadri

For Respondents : Mr.R.Thiagarajan

ORDER

This application has been filed by the 2nd defendant in the suit O.S.No.435 of 2018 to permit him to bring on record the documents which have been detailed in the schedule to the Judges Summons.

2. The suit O.S.No.435 of 2018 has been filed by the respondents 1 to 5 in the present application, (a) For a declaration that the settlement deed dated 20.12.2006 executed by late S.Krishnaswamy in favour of the 1st plaintiff, the 1st defendant and the applicant as illegal, unlawful and non-est in the eyes of law as it was vitiated by fraud, misrepresentation, undue influence and coercion; (b) For a mandatory injunction directing the 2nd defendant to handover possession of the ground and 2nd floor of the suit property to the 1st plaintiff; (c) For partition and separate possession of the suit properties into six equal shares and allocate equal shares to the plaintiffs 2 to 5 and defendants 2 and 3 subject to the life interest to the 1st plaintiff apart from seeking various reliefs for permanent injunction and mandatory injunction.

3. From the records it is seen that the 1st plaintiff had adduced evidence as P.W.1 and when the mother was called for her cross examination by the 2nd defendant the present application has been moved by the 2nd defendant.

4. In the affidavit which is filed in support of the said application, the 2nd defendant would contend that in the present suit the issues had been framed on 13.11.2019. The plaintiffs had not filed their list of witnesses nor the affidavit of documents. On 29.01.2020 the plaintiffs have served him the proof affidavit of P.W.1 in-chief, in which also there was no reference to any documents other than the ones filed in the plaint.

5. The applicant would contend that it was only now that he has been able to lay his hands on several documents as the 1st plaintiff who is none other than his maternal grandmother kept the same hidden in the suit premises. The applicant would contend that these documents are being deliberately kept away by the plaintiffs as the same would prove the contentions of the applicant in his written statement. He would therefore contend that the documents are vital to his defense and the non-production of those documents would cause immense hardship and prejudice to him.

6. The said application had been vehemently contested by the

respondents / plaintiffs who would contend that the documents that are now sought to be filed are computer generated print outs and therefore allegations that they were hidden by the 1st plaintiff was absolutely false. The respondents would further contend that there is no reference to these documents in the written statement filed by the 2nd defendant / applicant and in the absence of pleadings the evidence cannot be looked into and the documents cannot be received. The respondents would further contend that the application is nothing but an attempt to protract the proceedings.

7. Heard the counsels on either side and perused the application in question and the documents that are now sought to be received in evidence.

8. The main thrust of the defense put forward by the applicant is that the suit is hopelessly barred by limitation since the respondents are seeking to have the settlement deed executed by his grandfather set aside. He had also raised a defense that there was no cause of action for filing the suit besides raising other defenses. The present application has been filed

only to receive the documents to show that the property in question has been standing in the name of the 2nd defendant, his deceased mother and the 1st plaintiff ever since the year 2006 and one of the documents that is sought to be filed is the document showing mutation of the revenue records.

9. The applicant in his affidavit filed in support of the said application stated that he was only able to get the documents recently and further he has also stated that since the documents were in the custody of the grandmother and since she has not filed these documents into the Court it fell upon him to file the documents and bring the same to the notice of this Court. The application is one for receiving the documents and it is needless to state that the same can be marked in evidence only subject to the proof and relevance and also after taking note of the objection that would be made by the counsel appearing on behalf of the plaintiffs. No prejudice is going to be caused to the plaintiffs if these documents are received in evidence as it is well open to the 2nd defendant to summon the documents through public authorities and this in my opinion would only

result in the suit being further prolonged.

10. Taking into account all the above factors and the fact that the applicant has given reasons for non-production of the documents earlier this Court is inclined to allow the application. However the documents would be entertained in evidence only subject to their proof and relevance and it is further made clear that any valid and legal objection that is made by the plaintiffs shall be taken note of by the learned Master / Advocate Commissioner before whom the evidence would be taken. It is needless to state that the documents that have come into existence subsequent to the filing of the suit may not be entertained. The application is therefore allowed on the above condition.

15.07.2020

Internet : Yes/No
Index : Yes/No
Speaking / Non-Speaking
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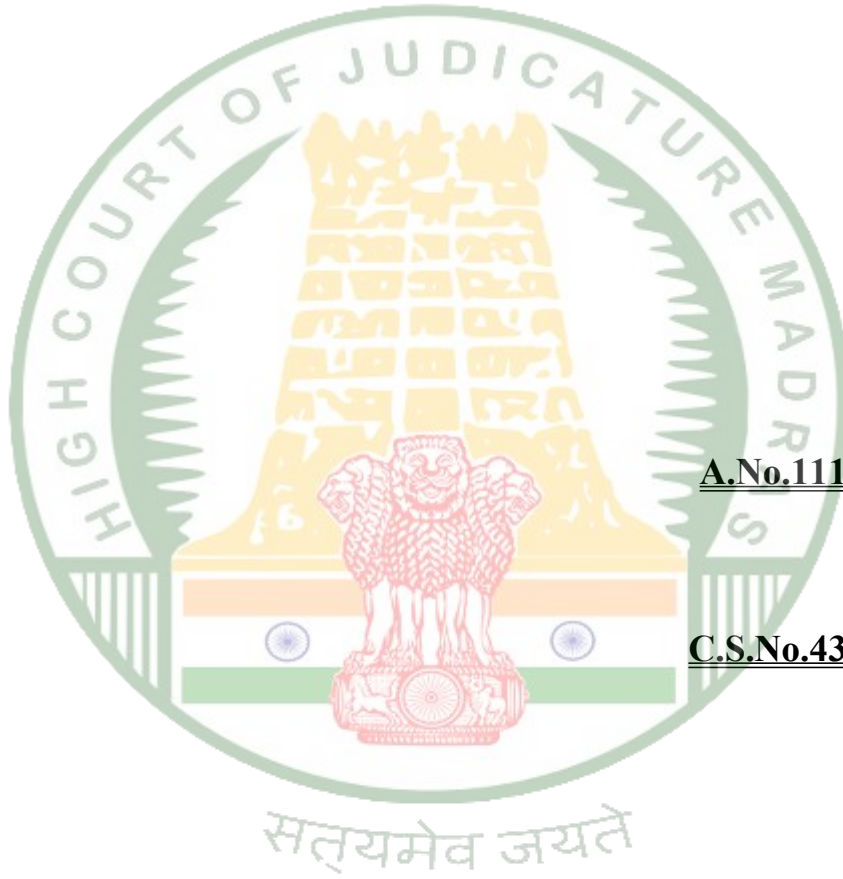
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