

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD).No.3601 of 2015

and

M.P.No.1 of 2015

Chinnappa Gounder,
S/o.Chennimalai Gounder

... Petitioner

Vs.

P.C.Arappan,
S/o.Chennimalai Gounder

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final order made in I.A.No.513 of 2015 in O.S.No.146 of 2011 on the file of the Subordinate Judge, Perundurai, Erode District, dated 27.07.2015.

For Petitioner : Mr.Titus Enock

for Ms.R.Nirmala

For Respondent : Mr.N.Manokaran

ORDER

This Civil Revision Petition has been filed by the petitioner/first defendant against the dismissal of the application in I.A.No.513 of 2015 in O.S.No.146 of 2011 on the file of the Subordinate Judge, Perundurai, Erode District dated 27.07.2015.

2. Even though this petition has been filed under the provisions of Order VIII Rule 3 (A) of C.P.C., the relevant provision would be Order VIII Rule (1) (A) Subrule 3 of C.P.C. It is well-settled that merely because wrong provision of law has quoted. The relief may not be rejected only the substance of the petition to be taken in to consideration. Hence this Court is pertaining with this Civil Revision Petition on the terms that the said petition is filed under Order VIII Rule(1) (A) Subrule 3 of C.P.C.

3. The respondent herein had filed a suit in O.S.No.146 of 2011 on the file of the Subordinate Judge, Perundurai, Erode District for the relief of partition under separate possession. During pendency of the said suit, the petitioner/first defendant herein had filed an application in I.A.No.513 of 2015 under order VIII Rule 3(A) and Section 151 of C.P.C., seeking leave to receive three documents namely a Will dated 11.05.1982; and registration copies of two sale deeds dated 29.08.1979. The learned Subordinate Judge had dismissed the said application by the order dated 27.07.2015. Feeling aggrieved, the petitioner/first defendant has filed the present civil revision petition.

4. Heard Mr.Titus Enock, learned counsel for the petitioner and Mr.N.Manokaran, learned counsel for the respondent.

5. The learned counsel for the petitioner/first defendant has submitted that the suit properties were purchased by the father of the petitioner and the respondent namely Chennimalai gounder under two registered sale deeds dated 17.09.1971 and hence the said properties are self acquired properties of the said Chennimalai gounder. He further submitted that the said Chennimalai gounder had executed an unregistered Will dated 11.05.1982 bequeathing the suit properties in favour of the petitioner/first defendant. He further submitted that even though the petitioner has categorically averred about the aforesaid sale deeds and also the will in the written statement, the said documents were not filed along with the written statement. He further submitted that the petitioner/first defendant has handed over those documents to his counsel even at the time of preparing written statement, but the said counsel did not file the said documents along with the written statement and hence at the time of trial, the petitioner/first defendant has filed an application in I.A.No.513 of 2015 seeking leave of the Court to receive the aforesaid documents, but the trial Court has erroneously dismissed the said

application. He further submitted that since the aforesaid documents are very vital documents, unless the said documents are received by the Court, the petitioner/first defendant cannot prove his case and therefore he prayed to allow this civil revision petition and set aside the order passed by the trial Court in I.A.No.513 of 2015 and allow the same.

6. Per contra, the learned counsel for the respondent/plaintiff has submitted even though the petitioner has pleaded in his written statement that their father had executed a will dated 11.05.1982, but the said Will was not produced along with the written statement and hence the respondent/plaintiff has filed an application before the trial Court under order XI Rule 16 of C.P.C in I.A.No.371 of 2013, to direct the petitioner herein/first defendant to produce the aforesaid Will and the Trial Court also passed an order dated 18.07.2013, directing the petitioner/first defendant to produce the said will. But inspite of the said order, the petitioner/first defendant herein did not produce the said will before the Court and hence he is not entitled to file the said document now. He further submitted that if really the petitioner's father executed any such Will in his favour, the petitioner/first defendant should have produced the same along with the written statement or atleast when the Court

directed him to produce the said document, but he has not produced the said document. He further submitted that the conduct of the petitioner shows that only subsequently he would have created the alleged will and hence the same cannot be received by the Court. He further submitted that since the petitioner/first defendant did not comply with the order of the Court which was passed under Order XI Rule 16 of C.P.C, the petitioner/first defendant is precluded from producing any such document by Order XI Rule 21 of C.P.C and also under Section 164 of Indian Evidence Act, 1872. He further submitted that even though the suit was filed in the year 2011, after a lapse of four years the petitioner/first defendant has come forward with an application in I.A.No.513 of 2015 seeking leave of the court for filing the said documents and taking into consideration of the aforesaid facts, the learned Subordinate Judge, Perundurai, has rightly dismissed the said application and in the said order, this Court need not interfere.

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7. This Court has carefully considered the rival submissions of the both side counsels and also perused the materials filed along with this civil revision petition.

8. It is seen from the typed set of papers filed by the petitioner/first defendant even though the petitioner/first defendant has pleaded in his written statement by virtue of the sale deeds dated 17.06.1971, his father was the absolute owner of the said properties and he executed a Will dated 11.05.1982 bequeathing the suit properties in his favour, he has not produced the said documents along with his written statement. Further, on the application filed by the respondent/plaintiff herein under Order XI Rule 16 of C.P.C in I.A.No.371 of 2013, the trial Court by the order dated 18.07.2013, has directed the petitioner/first defendant herein to produce the alleged Will dated 11.05.1982. In obedience to the said order also, the petitioner/first defendant has not produced the said document before the Court.

9. According to the learned counsel for the petitioner, the petitioner/first defendant has handed over copies of the aforesaid sale deeds and also the said will to his counsel even at the time of preparing written statement, but he did not file the said documents along with written statement and also subsequently he failed to produce the same before the Court in pursuance of the order dated 18.07.2013. But no such

averments have been made in the affidavit which has been filed in support of I.A.No.513 of 2015.

10. However, considering the fact that the petitioner/first defendant is claiming substantial right through the said will and also the fact that the respondent/plaintiff himself has asked the petitioner/first defendant to produce the said will, this Court is of the view that the petitioner/first defendant can be permitted to produce the said will before the Court.

11. Under Order XI Rule 21 of C.P.C., where any party fails to comply with any order of the Court for producing the said document, the Court may struck out the pleadings. But in this case, so far the Court has not struck out the pleadings. Further, Section 164 of Indian Evidence Act, 1872 also does not create any total bar for producing the document in a later stage. As per the said provision, when a party refuses to produce a document, which he has had notice to produce, he cannot afterwards use the document as without a consent of the other party or the order of the Court. In this case, the petitioner/first defendant seeks leave of the Court for producing the said document. If leave is granted to

receive the documents that does not mean that the said document is proved in accordance with law. After production of the documents, the petitioner has to prove the same in accordance with law. Hence, this court is inclined to allow this Civil Revision Petition. However, taking into consideration, the conduct of the petitioner/first defendant that he has not produced the said Will even after the direction issued by the trial Court and he filed the said documents belatedly after four years, this Court is of the view that the petitioner/first defendant shall put on heavy terms.

12. In the result, this Civil Revision Petition will be allowed on payment of cost of Rs.25,000/- (Rupees Twenty Five Thousand Only) to the respondent/plaintiff either directly or through his counsel who is appearing before the trial court within a period of three weeks from the date of copy of a receipt of this order, failing which, this petition shall stand dismissed automatically without further reference of this Court. If the petitioner/first defendant complies with the aforesaid condition, within the aforesaid period, the trial Court is directed to receive the aforesaid documents and proceed further in the suit in accordance with law. Further, the trial Court is directed to give an opportunity to the

respondent/plaintiff to file reply statement, if any, and also for adducing rebuttal evidence. Consequently, connected miscellaneous petition is closed. No costs.

05.11.2020

Index : Yes/No
Internet : Yes/No
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To

The learned Subordinate Judge,
Perundurai,
Erode District.



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