

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 848 of 2018

in

C.M.P.No. 4692 of 2018

Sarangapani

..Petitioner/Plaintiff

Vs.

Anandaraj

..Respondent/Defendant

Prayer: Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 03.01.2018 in I.A.No. 1322 of 2017 in O.S.No. 360 of 2011 on the file of the Additional District Munsif, Vellore.

For Petitioner : Mr.R.Rajarajan

For Respondent : Mr.R.Senthilkumar

O R D E R

The plaintiff in O.S.No. 360 of 2011 has come up with this Civil Revision Petition aggrieved by an order made in I.A.No. 1322 of 2017 permitting production of the xerox copy of the so called assignment order dated 13.06.1956 at the instance of the defendant in the suit.

2. The suit was filed by the plaintiff seeking permanent injunction restraining the defendant from interfering with his possession on the strength of Thoraya Patta issued by the Headquarters Deputy Tahsildhar, Vellore in favour of one Agilandam. It is claimed that she had settled the property in favour of the plaintiff on 03.12.2010. It is the contention of the plaintiff that the suit property is Natham land.

3. The defendant resisted the suit contending that the suit land was actually assigned to one Kalingarajan and the defendant's family has been in possession through out. It is claimed that the assignment was in the year 1956. At the trial of the suit, the defendant filed an application seeking summons to the authorities to produce the original assignment order dated 13.06.1956. Though the said application was allowed, the Zonal Deputy Tahsildhar, who appeared pursuant to the summons

deposed before the Court that such assignment order is not available in the Office of the District Collector. Thereafter, the defendant came with the petition for the receipt of the xerox copy of the said assignment order. This was opposed by the plaintiff contending that the Xerox copy cannot be admitted in evidence in the absence of compliance of requirements under section 65 of the Evidence Act. Xerox copy can only be treated as a secondary evidence. The person, who seeks to produce secondary evidence must plead and prove that the primary evidence is not available or is out of reach.

4. The defendant claims that the assignment was in favour of one Kalingarajan therefore, it should have been available with Kalingarajan. There is nothing in the written statement or in the affidavit in support of the petition seeking permission to produce secondary evidence to show that the original is lost or is not readily available. The fact that the authorities have also said that the assignment order is not available strengthens the suspicion. The suit land, admittedly is classified as Natham land and therefore, it cannot be a subject matter of assignment. In the absence of compliance of the requirements under Section 65 of the Evidence Act, the Trial Court was not right in allowing the application and permitting the defendant to produce secondary evidence solely on the ground that the authorities have said that the original assignment order is not available with them.

5. In view of the same, the order of the Trial Court allowing the production of secondary evidence is set aside and the Civil Revision Petition will stand allowed and the I.A.No. 1322 of 2017 will stand dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:-
The Additional District Munsif Court,
Vellore.

+1cc to Mr.G.Rajan, Advocate Sr.No.25069

C.R.P.No. 848 of 2018 in
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