



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 04.03.2020

CORAM:

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) .No.2490 of 2011

and

M.P. (MD) .No.1 of 2011

T.V.Damodharan

:Petitioners/
2nd Plaintiff/2nd Respondent

Vs.

Mahalakshmi (died after suit)

1.S.Devaraj Pandurangan

2.S.Navaneetha Anandalakshmi

3.S.Mathuravalli Kameshwari

4.S.Komalavalli

5.S.Venkatesan

6.S.Lalitha Devi

7.S.Nagalakshmi

8.Jagadeeswari

9.G.Sekar @ Paranthaman

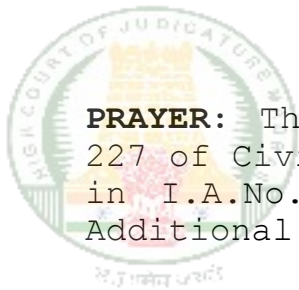
10.Padmanabhan

11.The Sub Registrar,
Nachiarkoil Office,
Main Road,
Nachiarkoil.

12.The District Registrar,
Kumbakonam Office,
Dr.Moorthy Road,
Kumbakonam Town.

13.The Government Of Tamil Nadu,
Represented by the District Collector,
Thanjavur,
Cutcherry Road,
Thanjavur.

: Respondents



PRAYER: This Civil Revision Petition has been filed under Article 227 of Civil Procedure Code, to set aside the order dated 05.07.2011 in I.A.No.85 of 2011 in O.S.No.100 of 2002 on the file of the Additional Subordinate Judge, Kumbakonam.

For Petitioner : Mr.K.Govindarajan
For Respondents : Mr.V.Chandrasekar
1, 2 & 5
For Respondents : Mr.V.P.M.Vaishnavi (Government Advocate)
11 to 13
For Respondents : No appearance
3, 6, 9 and 10
For Respondents : Dismissed
4, 7 and 8

ORDER

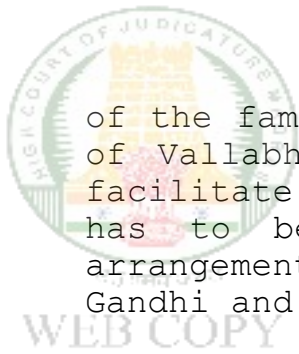
This petition has been filed to set aside the order dated 05.07.2011 in I.A.No.85 of 2011 in O.S.No.100 of 2002 on the file of the Additional Subordinate Judge, Kumbakonam.

2.The petitioner is the second plaintiff in the suit. The respondents 1 to 8 are the defendants 6 to 13 in the suit. The ninth respondent is the first plaintiff in the suit. The tenth respondent is the first defendant and the respondents 11 to 13 are the defendants 3 to 5 in the suit and the defendants 2 and 6 died after the suit.

3.The petitioner has filed a suit in O.S.NO.100 of 2002 for partition and for allotment of 1/3rd share in the suit property. In the suit, the respondents 1 to 8 / defendants 6 to 13 had filed a petition in I.A.No.85 of 2011 to examine the father of the second plaintiff viz., Vallabhadhas Gandhi as Court witness and to produce the original documents dated 18.07.1979 and the same was allowed by the trial Court. Against which, the petitioner has preferred this revision petition.

4.Brief substance of the petition in I.A.No.85 of 2011 reads as follows:

The case is posted for arguments, after the completion of the evidence on both the sides. The second plaintiff was recalled twice and he deposed against the averments in the document. Hence, the defendants are constrained to deny the evidence of the petitioner and for that D.W.2 has to be recalled. A certified copy of the settlement deed was denied by the plaintiffs. The family arrangement between the father of the second plaintiff and the legal heirs of Tulasi Raman Chettiyar dated 18.07.1979 was marked as Ex.B7. The father of the second plaintiff by name Vallabhadhas Gandhi has signed the documents dated 05.05.1979 and 07.07.1979. On the basis



of the family settlement, another case was filed on the instigation of Vallabhadhas Gandhi and he has to be examined as witness. To facilitate the defendants to cross examine Vallabhadhas Gandhi, he has to be examined as a Court witness. The original family arrangement dated 18.07.1979 is to be called for from Vallabhadhas Gandhi and the trial has to be reopened.

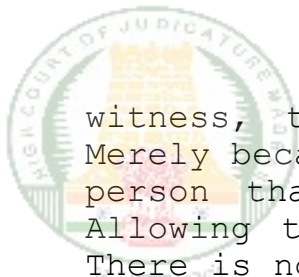
5.The brief substance of the counter in I.A.No.85 of 2011 reads as follows:

The family settlement was already denied by the plaintiffs. Even if there was a family arrangement, it was not at all effected. It is the duty of the defendants to prove the execution of the family arrangement and that the suit property was allotted to the second defendant through the said family arrangement. All the defendants are colluding together and the written statement of the first defendant was adopted by the second defendant and there after by his legal heirs.

6.The plaintiffs are not parties to the alleged family arrangement and hence, P.W.1 and P.W.2 have deposed that they were not aware of the family arrangement. The defendants 6 to 14 during the course of cross examination of the first defendant have marked some documents, which were not pleaded in their written statement. The copy of the deposition of the father of the first plaintiff Gopala Krishnan given in O.S.No.456 of 1993 and a muchalika dated 07.05.1979 alleged to have been executed between the legal heirs of Tulasi Raman Chettiyar filed in O.S.No.456 of 1993 were filed.

7.Only after the filing of those documents, the respondents verified the records and came to know that Gopala Krishnan denied the said family arrangement and the case was decided based on the averments that the muchalika was not effected. Without narrating the entire facts, the petitioners filed documents, as if the family arrangement was accepted by the parties. To establish this, this respondents marked the judgment in O.S.No.86 of 2002 by recalling P.W.2. There is no necessity for the defendants 6 to 14 to question P.W.2 again. The document said to have been executed by Vallabhadhas Gandhi dated 18.07.1979 was already marked as Ex.B7. This document was not specifically denied by the plaintiffs. The signature in the document was accepted by the first defendant. There is no necessity to call for the original document. The claim of the second plaintiff is that the documents did not come into effect. There is no necessity to call for the original document or to examine Vallabhadhas Gandhi regarding the document.

8.D.W.1 has accepted the signature of the father of the plaintiffs in the document marked as Ex.B4 dated 05.05.1979. There is no necessity to examine Vallabhadhas Gandhi regarding those document. To examine a person as a Court witness, reasons has to be



witness, that person alone can be examined as a Court witness. Merely because one of the party wanted to cross examine a particular person that the person cannot be examined as a Court witness. Allowing the petition will call for re-trial of the entire case. There is no necessity to recall D.W.1. There is no necessity to call for the original document, when the certified copy was marked as Ex.B7. There is no necessity to examine Vallabhadhas Gandhi as a Court witness.

9.After hearing both sides, the trial Court allowed the petition. Against which, the petitioner preferred this revision petition on the following grounds:

The order of the learned Sub Judge is erroneous and no reasons for allowing the petition was stated in the order. The trial Court failed to consider the counter.

10.On the side of the petitioner, it is stated that the party in a suit cannot compel the other party to give evidence against his own case. The trial Court failed to assign any reason for allowing the petition. The certified copy of the document was already marked as Ex.B7. There is no necessity to call for the original document. The signature in the document was admitted by P.W.1. Even then, the trial Court without considering the counter has allowed the petition.

11.On the side of the respondents, it is stated that there was an oral family partition and that there was a family arrangement in writing. One such family arrangement was signed by the second plaintiff's father and that an opportunity for the petitioner to put forth his case has to be given and that to find out the real dispute between the parties, the examination of Vallabhadhas Gandhi is necessary.

12.Already a certified copy of the said document was marked as Ex.B7. The signature in the document was accepted by the first defendant. The reason for calling for the original document is not specifically stated in the petition. Hence, it is decided that calling for original document is not necessary in this case.

13.It is stated that the father of the second plaintiff has signed the family settlement. The respondent/revision petitioner did not specifically deny the family settlement. The case of the plaintiff is that no such family arrangement was effected.

14.Whether the family arrangement was effected is to be decided by the trial Court.

15.Even if the examination of the father of the second plaintiff is necessary, he cannot be examined as a Court witness.

<https://hccs.courts.go.ke/cases/cases> Civil Case No. 2490 of 2011



neutral witness who the Court deems fit to be examine as a court witness can be examined as a Court witness. Facilitating the defendants to cross examine a particular witness is not a reasonable ground to examine a particular witness as a Court witness.

16. On the side of the petitioner, it is stated that P.W.2 was recalled twice and some documents were marked through him and to disprove the subsequent evidence of P.W.2, D.W.2 has to be recalled and examined.

17. It is seen that the judgment in O.S.No.86 of 2002 was marked and for giving an opportunity for the petitioner to disprove the evidence of P.W.2, recalling D.W.2 is necessary.

18. It is seen that both the parties are in the habit of filing many interlocutory application and the suit is pending from the year 2002. Hence, a direction is to be given to the trial Court to dispose of the petition within a time frame.

19. In view of the above, the order passed by the trial Court is modified to the effect that relief to reopen the case and to recall D.W.2 is confirmed and with regard to the relief of calling upon the second plaintiff's father to produce documents and to examine him as a Court witness, the order of the trial Court is to be set aside.

20. In the result, this civil revision petition is partly allowed. Further, the trial Court is directed to dispose of the trial within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (A.S)

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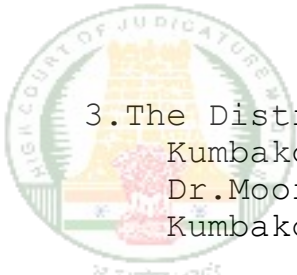
Sub Assistant Registrar(CS)

mrn

To

1. The Additional Subordinate Judge,
Kumbakonam.

2. The Sub Registrar,
Nachiarkoil Office,
Main Road, Nachiarkoil.



3.The District Registrar,
Kumbakonam Office,
Dr.Moorthy Road,
Kumbakonam Town.

4.The District Collector,
The Government Of Tamil Nadu,
Thanjavur,
Cutcherry Road,
Thanjavur.

5.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.GOVINDARAJAN, Advocate SR-10421.

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CS (03.07.2020) 6P 7C