



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.01.2020**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P. (PD) (MD) Nos.87 and 88 of 2020

and

C.M.P. (MD) Nos.429, 430 and 432 of 2020

WEB COPY

- 1.T.Angayarkanni
- 2.T.Durai Ramasithamparam
- 3.T.Jothi Venkatachalam
- 4.T.Ravi
- 5.T.Gnanasundaram
- 6.V.T.Singaravelan
- 7.T.Ilangovan
- 8.T.Annam @ Thamaraiselvi
- 9.T.Valli

: Petitioners in both C.R.Ps.

Vs.

- V.Muthuramalingam (Died)
Jegathammal (Died)
- 1.Palanivel
 - 2.Venkatachalam
 - 3.Selvamani
 - 4.Nagavalli
- Balasubramanian (Died)
- 5.Jothi
 - 6.Vidhya
 - 7.Thilagavathi
 - 8.Parvathi
 - 9.Jothi Meena
 - 10.Jothi Venkatachalam
 - 11.Shanmugam
 - 12.Tamil Aarasi
 - 13.Kalavathi
 - 14.Uma
 - 15.Manivannan

: Respondents in both C.R.Ps.

COMMON PRAYER: Revisions are filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 09.12.2019 in I.A.Nos.2 and 3 of 2019 in O.S.No.34 of 2010 respectively on the file of the Sub Court, Periyakulam.

For Petitioners : Mr.V.Meenakshi Sundaram
in both cases

For Respondents : Mr.M.Saravanan
1 to 4 in both cases



C O M M O N O R D E R

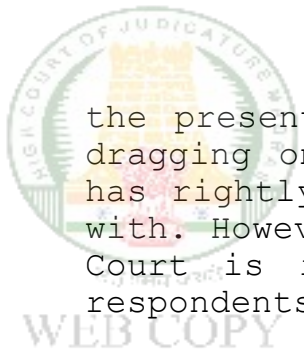
These Civil Revision Petitions have been filed as against the order of the Trial Court dismissing the applications filed for re-opening and recalling of D.W.1 and to mark three documents, namely, the certificate issued by the Revenue Inspector, Chinnamanur, to prove the deficit stamp paid on the sale deed, which is already marked as Ex.B.8 and another two documents, i.e., memorandum of grounds in S.A.(MD)No.777 of 2014, which is filed as against the finding of A.S.No.11 of 2013, relating to item No.11 of the suit property, to show that the above finding is challenged in the Second Appeal and the report dated 19.07.2019 of the Tahsildar, Uthamapalayam.

2. It is the contention of the revision petitioners before the Trial Court that since those documents are relevant to show that item No.11 is in separate possession pursuant to the earlier partition, those documents are absolutely necessary, and unless the certificates evidencing the stamp duty have been filed, Ex.B.8, which is already marked, will not be proved. Similarly, other documents are also relevant. The learned Trial Judge, taking note of the fact that the suit is of the year 1999 and previously five similar Interlocutory Applications were filed by the defendants for re-open, has dismissed the applications with cost of Rs.5,000/- each and posted the suit for judgment, as against which, the present Civil Revision Petitions came to be filed.

3. Heard the learned counsel appearing for the revision petitioners and the learned counsel appearing for the caveators, namely the respondents 1 to 4.

4. It is the contention of the learned counsel appearing for the revision petitioners that the documents are absolutely necessary to establish the substantive right of the parties and unless those documents have come on record, their valuable right would be defeated and the revision petitioners will be put into irreparable loss and hence, it is contended that within a day, the revision petitioners will produce those documents and they will not take any adjournment in this regard. It is further contended that merely because some other applications were filed in the earlier occasions, that cannot be a ground to non-suit the defendants to establish their valuable right. Hence, it is submitted that they will mark those documents on the same day and argue on the next day and the Trial Court can dispose of the suit in the same month.

5. The learned counsel for the respondents 1 to 4/caveators submitted that the suit is of the year 1999. The conduct of the parties also assumes significance. On earlier occasions, they filed similar five applications and they could have filed those documents at an earlier stage. When the case was posted at the stage of arguments,



the present applications came to be filed only for the purpose of dragging on the matter. It is his contention that the Trial Court has rightly rejected the applications, which need not be interfered with. However, the learned counsel submitted that in the event, this Court is inclined to pass an order allowing the revisions, the respondents 1 to 4/caveators/plaintiffs are ready to co-operate.

6. I have also perused the Diary status of the case, which makes it clear that the Trial Court reserved the case for judgment without hearing the defendants and posted for judgment on 20.01.2020.

7. Having regard to the above facts, the conduct of the defendants may not be appreciable and the way in which they filed several applications on the earlier occasions clearly indicated that they dragged on the proceedings to the maximum extent. Be that as it may, the suit is one for partition and the documents sought to be filed are in the nature of public documents, two certificates issued by the authorities to show that the deficit stamp duty has been collected on the original of Ex.B.8, whereas, certified copy of the original document has been filed as Ex.B.8, wherein, it appears that an endorsement was made indicating that the stamp duty has not been collected. If the same is allowed to come on record, it should be presumed that the sale deed is not properly valid and not admissible in evidence. In such an event, the valuable right of the parties will certainly be defeated. Therefore, the certificates sought to be marked are relevant to prove Ex.B.8, which is already marked. Similarly, the findings in A.S.No.11 of 2013 are challenged in S.A. (MD)No.777 of 2014 and unless the pendency of the appeal is shown, there will be a chance for presuming that the above judgment is reached finality. If such thing is happened, it will amount to miscarriage of justice. Though the conduct of the revision petitioners in filing such documents at the fag end of the trial may not be appreciable, in order to give a fair chance to agitate their rights and to prove their substantive right, this Court is of the view that the revision petitioners may be granted one more chance to file those documents.

8. Accordingly, the order of the Trial Court dated 09.12.2019 rejecting the applications in I.A.Nos.2 and 3 of 2019 in O.S.No.34 of 2010, is, hereby, set aside and the revision petitioners shall mark the aforementioned documents on 22.01.2020 and D.W.1 shall give evidence on 22.01.2020 and subject himself to cross-examination on the same day and other side shall argue the matter on 23.01.2020 itself and on the same day, they will also conclude their arguments. It is also made clear that if the revision petitioners have not come forward to file those documents on 22.01.2020 or D.W.1 subjecting himself to cross-examination on the same day, right to file the documents and right to re-open the case will be forfeited and they will not be given any further more chance and the Trial Court shall



the suit on merits. After all, the suit is filed for partition. Therefore, every document relating to the respective pleadings is relevant for effective adjudication between the parties. The plaintiff's' counsel also should cross-examine D.W.1 on the same day. While marking those documents, the respondents 1 to 4/caveators/plaintiffs are also at liberty to make objection, if any. If any such legal objection is raised, the same may be noted in the deposition itself and the same be dealt with by the learned Subordinate Judge, while disposing the suit. The Trial Court shall hear the arguments of both sides on 23.01.2020 and thereafter, decide the suit on merits and dispose of the same, on or before 31.01.2020.

9. In fine, the Civil Revision Petitions are allowed with cost of Rs.5,000/- [Rupees Five Thousand only] **each** payable to the respondents 1 to 4/caveators/plaintiffs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

SML

To
The Subordinate Judge,
Periyakulam.

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-1811[F] dated 13/01/2020)

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-1814[F] dated 13/01/2020)

Common Order made in
C.R.P. (PD) (MD) Nos.87 and 88 of 2020
Dated: **13.01.2020**

JMN(20.01.2020) 4P : 4C