



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.12.2019

Delivered on : 10.02.2020

WEB COPY

CORAM

THE HONOURABLE MRS. JUSTICE R.THARANI

C.R.P.(MD)Nos.1330 to 1332 of 2019

and

C.M.P.(MD)No.7237 of 2019

1. Panchavarnam

2. Mohan

3. Natarajan

... Petitioners in all C.R.Ps

Vs.

1. S.Anbu Ganesan

2. Pachai Thangam

3. Indira Devi

4. Jeyakodi

5. Saraswathi

6. Velmurugan

7. Soundarapandiya Nadar

... Respondents in all C.R.Ps

Common Prayer : These revision petitions are filed under Article 227 of Constitution of India, to set aside the order passed by the Learned Principal District Court, Virudhunagar District at Srivilliputhur dated 04.07.2019 in I.A.Nos.1 to 3 of 2019 in OS.No.169 of 2009.

(In all C.R.Ps)

For Petitioners : Mr.N.Dilip Kumar

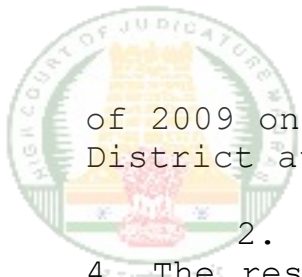
For R1 : Mr.M.Solaisamy

For R7 : Mr.T.Lajapathi Roy

For R2 to R6 : No appearance

COMMON ORDER

These civil revision petitions are filed against the order dated 04.07.2019, in I.A.Nos.1 to 3 of 2019 in OS.No.169 of 2009.



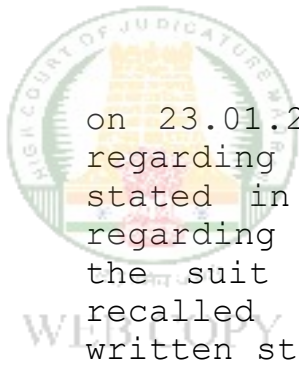
of 2009 on the file of the Principal District Court, Virudhunagar District at Srivilliputhur.

2. The revision petitioners herein are the defendants 2 to 4. The respondents 1 to 6 herein are the plaintiffs. The seventh respondent herein is the first defendant in the suit. The respondents 1 to 6 herein filed a suit in O.S.No.169 of 2009 for a prayer of partition and for allotment of 1/4-th share in "A and B" schedule properties. The petitioners herein/ defendants 2 to 4 filed a petition in I.A.No.1 of 2019, to reopen the case; in I.A.No.2 of 2019, to recall D.W.2 and I.A.No.3 of 2019, to receive additional written statement filed by the petitioners herein/ defendants 2 to 4. Those petitions were dismissed by the trial Court. Against which, the petitioners preferred these Civil Revision Petitions.

3. The brief substance of the Interlocutory Applications is as follows:

The petitioners filed a written statement in the suit and filed additional written statement. The suit is pending at the stage of defendants side arguments. The second petitioner/ third defendant was examined as D.W.2 and documents Exs.B.58 to B.61 were marked. In the above circumstances, a person by name Ganapathiyappan filed a suit against the first plaintiff / Anbu Ganesan, for recovery of a sum of Rs.25,000/- in O.S.No.35 of 2013. In that suit, a petition in I.A.No.158 of 2013, to attach the property mentioned as 'A' Schedule property of this suit was filed by the said Ganapathiyappan. The first plaintiff / first respondent herein did not make his appearance in that suit and he failed to file a written statement in that suit and failed to file counter in I.A.No.158 of 2013 also. The value of the property as mentioned in the plaint is Rs.20,35,000/- (Rupees Twenty Lakhs Thirty Five Thousand only), but the properties are attached for a claim of Rs.25,000/- (Rupees Twenty Five Thousand only). Ex-parte decree was passed by the District Munsif, Srivilliputhur.

4. The fourth defendant filed an Interlocutory Petition in I.A.No.270 of 2018 and the order of attachment was vacated on 07.01.2019. Subsequently, the suit in O.S.No.35 of 2013 before the District Munsif, Srivilliputhur was dismissed for default. In the above circumstances, it is clear that the plaintiffs in this suit (O.S.No.169 of 2009) and the plaintiffs in that suit (O.S.No.35 of 2013), Ganapathiyappan colluded together. If at all the plaintiff is having some right over the "A" schedule property, he would have contested I.A.No.374 of 2013 in O.S.No.35 of 2013, he would not have allowed the property to be attached. He would not have allowed a valuable property to be attached for a meagre amount of Rs.25,000/-. Since the suit was dismissed for default



on 23.01.2019, after evidence of D.W.2 on 09.01.2019, the facts regarding the dismissal of suit, in O.S.No.35 of 2013, are to be stated in the affidavit to be filed by D.W.2, that documents regarding that suit is necessary to be marked in that case. Hence the suit has to be reopened and the witness-D.W.2 has to be recalled and the petitioners must be permitted to file additional written statement.

5. The brief substance of counter affidavit of the respondents 1 to 6 is as follows:

Already trial was over. The argument of the plaintiffs side was also over. At this stage, there is no necessity to reopen the case. The documents regarding the suit against the first defendant filed by a third party is not relevant to decide the issue in question in this case.

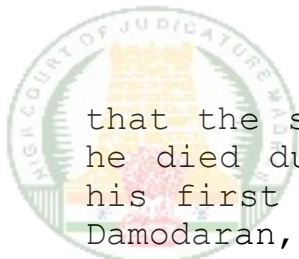
6. The brief substance of counter affidavit of the seventh respondent is as follows:

These petitions are filed to drag on the proceedings and the petitioners have to prove the petitions.

7. After considering the evidence and documents, the trial Court dismissed the petitions. Against which, the petitioners have filed these Civil Revision Petitions.

8. On the side of the revision petitioners, it is stated that the trial Court is wrong in dismissing the petitions for recalling D.W.2 and for reopening the case and for filing additional written statement regarding the suit in O.S.No.35 of 2013 and I.A.No.158 of 2013. The trial Court failed to consider that the marking of the documents will be great assistance to the Court for adjudicating the present case. The trial Court failed to consider that the documents are made available only after the examination of witnesses are over and those documents are necessary to prove the case of the plaintiffs and those documents are required to be marked through D.W.2. The trial Court failed to consider that the plaintiffs having raised their case on the basis of the falsified facts and the said documents are necessary to be marked on the side of the petitioners herein and that immediately after the disposal of O.S.No.35 of 2013, the petitioners have filed this petition and that no prejudice will be caused to the other side. The trial Court failed to consider the value of "A" schedule property stated in the plaint and failed to consider that this property was allowed to be attached by a third party for a meagre sum of Rs.25,000/- (Rupees Twenty Five Thousand only). The trial Court failed to consider that the petitioners must be given an opportunity to prove their case.

9. On the side of the revision petitioners, it is stated



that the suit property belonged to one Ponnu @ Ponniah Nadar and he died during 1990, he got two sons and two daughters and that his first son/Soundirapandian is the first defendant another son/Damodaran, is the husband of second defendant/Panchavarnam. He got two daughters, one is Sri Rengammal, who got married during 1948. The plaintiffs are the issues of Sri Rengammal, another daughter Graharani married during 1962, the defendants 2 to 4 are the legal representatives of one Damodharan, who is one of the son of Ponnu @ Ponniah Nadar. 'A' schedule property stands in the name of Ponnu @ Ponniah Nadar and others stand in the name of the first defendant. During the year 1990, Ponnu Nadar, died. The grand-sons through one of the daughter viz., Sri Rangammal are the plaintiffs and they allowed a third person/ Ganapathyappan to file a suit for recovery of a sum of Rs.25,000/- and they allowed an I.A. petition to be allowed, thereby, attaching A schedule property which reveals that there was collusion between the plaintiffs and the said Ganapathyappan. Though the trial Court discussed the facts, dismissed the petitions, stating that the documents are not warranted for the case. To prove that there is a malafide intention on the part of the plaintiffs, these documents are necessary. There is no delay on the part of the petitioners.

10. On the side of the respondents, it is stated that the trial Court after considering the evidence has rightly dismissed the I.A. petitions and hence, the Civil Revision Petitions are to be dismissed. It is further submitted by the respondents counsel that a time may be fixed by this Court to dispose of the case.

11. It is seen that the value of 'A' schedule property is mentioned as Rs.20,35,000/-. The fact that a third person filed a suit against the plaintiffs was not denied by the respondents 1 to 6. It is seen that in I.A.No.158 of 2013 in O.S.No.35 of 2013, an order was passed, by attaching the 'A' schedule property. The contention of the Revision Petitioners is that the collusion between Ganapathiyappan and the plaintiff is proved in leaving the property worth more than Rs.20,00,000/-, to be attached for a sum of Rs.25,000/- and that this collusion is to be proved by the defendants. In the above circumstances, those documents are necessary to be marked in this case. Obviously, the suit in O.S.No.35 of 2013 was dismissed for default only after the evidence of D.W.2 was over. In the above circumstances, an opportunity is to be given to the petitioners to putforth their case. Hence, it is decided that the suit is to be reopened and the witness has to be recalled.

12. It is seen that the property attached in I.A.No.158 of 2013 is the A schedule property in this suit and the allegation of the defendants is that there is a malafide intention on the part



of the plaintiffs to allow the property to be attached. In the above circumstances, an opportunity for the petitioners to substantiate their claim is to be given. The petitioners have come forward with these petitions after the suit in O.S.No.35 of 2013 was dismissed for default. In the above circumstances, the petitioners should be permitted to file an additional written statement.

13. In the above circumstances, to avoid further delay a direction for the trial Court to dispose of the case within a time frame is necessary. Hence, the trial Court is directed to dispose of the case **in O.S.No.169 of 2009** within a period of four months from the date of receipt of copy of the order.

14. In the result, with the above direction, these Civil Revision Petitions are allowed and the orders, dated 04.07.2019, in I.A.Nos.1 to 3 of 2019 in O.S.No.169 of 2009 on the file of the Principal District Court, Virudhunagar District at Srivilliputhur, are set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1.The Principal District Court,
Virudhunagar District,
Srivilliputhur.

2.The Section Officer-2 COPIES
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to MR.N.DILIP KUMAR, Advocate (SR-5637[F] dated
11/02/2020)

order made in
C.R.P.(MD)Nos.1330 to 1332 of 2019
10.02.2020

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<https://hcservices.ecourts.gov.in/hcservices/>