

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.06.2021**

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P. (PD) Nos.195 of 2019, 125 of 2021
and C.M.P.Nos.1568 of 2019, 1161 of 2021

C.R.P.(PD) No.195 of 2019

M.P.Padmavathi

... Petitioner

Vs

1.S.Sundaram
2.Gomathi
3.R.P.Sakthivel

... Respondents

C.R.P.(PD) No.125 of 2021

S.Sundaram

... Petitioner

Vs

1.M.P.Padmavathi
2.Gomathi
3.R.P.Sakthivel

... Respondents

PRAYER in C.R.P.(PD) No.195 of 2019: Civil Revision Petition filed

under Article 227 of the Constitution of India to set aside the order dated

14.11.2018 made in I.A.No.466 of 2018 in O.S.No.412 of 2017 on the file of the Learned Subordinate Judge, Kangeyam.

PRAYER in C.R.P.(PD) No.125 of 2021: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Final Order, dated 23.10.2019 passed in I.A.No.675 of 2019 in O.S.No.412 of 2017 on the file of Subordinate Judge, Kangayam, Tiruppur District.

For Petitioners : Mr.P.Prabakar
in C.R.P.No.195 of 2019

Mr.S.Saravanan
in C.R.P.No.125 of 2021

For Respondents : M/s.S.Saravanan for R1
No Appearance for R2 and R3
in C.R.P.No.195 of 2019

M/s.P.Prabakar for R1
No Appearance for R2 and R3
in C.R.P.No.125 of 2021

COMMON ORDER

The C.R.P.No.195 of 2019 has been filed by the plaintiff in O.S.No.412 of 2017 now pending on the file of the Sub Court at Kangeyam and C.R.P.No.125 of 2021 has been filed by the first defendant in the very same suit O.S.No.412 of 2017.

2. Both the Civil Revision Petitions arises out of persistent efforts made by the plaintiff in the suit by filing applications under Order 76 of the Civil Rules of Practice seeking permission of the learned Sub Judge, Kangeyam to send for documents from the Sub Registrar Office at Vellakoil with respect to the said 16 number of documents which has been listed in the petition. Originally the plaintiff filed petition in I.A.No.372 of 2018 under Rule 76 of the Civil Rules of Practice seeking a direction to the Court to send for documents which according to the petitioners / plaintiffs were available in the Sub Registrar Office at Vellakoil. The details of the documents had also been given. There were 16 documents. All of them are either Power of Attorney or Cancellation of Power of Attorney.

3. It must be pointed out that such an application should have been filed under Rule 75 of the Civil Rules of Practice. The said application came to be dismissed by an order dated 11.04.2018. The learned Judge held that the plaintiff had not taken any efforts to apply for certified copies of the said documents. He had also independently mentioned that the petitioners have not stated how the documents are relevant to determine the issues. The said order was questioned in C.R.P.No.10371 of 2018. By an order dated 02.07.2018, the learned single Judge of this Court had refused to interfere with the said order.

4. The learned Judge had accepted to the reasons given namely that the petitioner had straight away filed application under Rule 75 of the Civil Rules of Practice without applying for certified copies. Learned Judge had also observed that the relevancy of the documents had not also been stated.

5. The plaintiff thereafter went back to the Sub Registrar Office, Vellakoil and made an application for certified copies of the said documents. The said application was returned in the Sub Registrar Office, Vellakoil. The plaintiff then went back to the Sub Court to file

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I.A.No.466 of 2018 once again under Rule 76 of the Civil Rules of Practice. The said application again came to be dismissed by an order dated 11.04.2018. Questioning that order C.R.P.(PD) No.195 of 2019 had been filed.

6. In the meanwhile, the plaintiff again filed I.A.No.675 of 2019 once again under Rule 76 of the Civil Rules of Practice which should have been under Rule 75 of the Civil Rules of Practice again calling upon the Court to call for the said documents which were available at Sub Registrar Office at Vellakoil. By an order dated 23.10.2019 that application was allowed. This had given rise to the filing of C.R.P.(PD) No.125 of 2021 filed by the first defendant.

7. The first defendant is naturally confused. On two earlier occasions, similar applications were rejected by the Sub Court, Kangayam. The third application filed seeking to very same relief came to be allowed.

8. In so far as C.R.P.No.195 of 2019 which questioned the order in I.A.No.466 of 2018, the learned Judge, after observing that the petitioner

had filed application to obtain certified copies of the said documents had again reiterated that the relevancy of the said document had not been stated and therefore had thought it fit to dismiss the said application.

9. Since, the plaintiff had obtained relief in I.A.No.675 of 2019, passing any further orders in C.R.P.No.195 of 2019 would be of no avail and therefore the said Revision Petition is dismissed without entering into the discussions on the merits of the order passed.

10. The order in I.A.No.675 of 2019 dated 23.10.2019 challenged in C.R.P.No.125 of 2021 has now to be examined. This order has been very seriously questioned by M/s.S.Saravanan, learned counsel for the Revision Petitioner / first defendant who pointed out that once again the learned Judge had not given any finding as to how the said documents are relevant to determine the issues in the suit.

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11. In this connection, my attention has been drawn by both the learned counsels to Rule 75 of the Civil Rules of Practice. M/s.S.Saravanan drew more specific attention to Rule 75(2) of the Civil Rules of Practice. Rule 75 relates to *Production of records in the*

custody of Public Officer other than a Court. In this instant case the Public Officer is the Sub Registrar, Vellakoil. It is an admitted fact that the documents mentioned are available in the said Office. The Rule gives the procedure in which the summons for production of such records have to be issued and it had been stated that it should be in Form No.23 as given in the Civil Rules of Practice and Circular Orders. The sub Rule (2) is now insisted upon by M/s.S.Saravaan as learned counsel:

"75. Production of records in the custody of a Public Officer other than a Court:-

(2) Every application for such summons shall be made by a verified petition setting out (i) the document or documents the production of which is required; (ii) the relevancy of the document or documents; and (iii) in case where the production of a certified copy would answer the purpose, whether application was made to the proper officer for a certified copy or copies and the result of such application."

12. The learned counsel stated that any application should give the details with respect to the documents, the details with respect to the relevancy of the documents and the details whether any application was made for applying for certified copies.

13. The petitioner in the Interlocutory Application / plaintiff had satisfied two conditions by giving the details of the documents and had that she had made application to the proper Officer for copies and that such application was rejected.

14. It is the contention of Mr.P.Prabakar, learned counsel for the respondent in C.R.P.(PD) No.125 of 2021 that necessary reasons regarding the relevancy of the said documents had been stated in the affidavit filed in support of I.A.No.675 of 2019. However, it is stated in unison by both the learned counsels that the learned Judge had not stated or had not given any finding whether the documents sought to be produced are actually relevant to determine the issues in the suit. That is the nature of the order required to be passed in an application under Rule 75 of the Civil Rules of Practice. The learned Judge should examine first whether the documents had been properly described. Then he should

examine whether the documents are relevant to the issues in the suit and later he should also examine whether certified copies of the documents had been applied and whether the Court should orders summoning the documents from the Public Officer.

15. It would only be appropriate that the matter is remanded back to Sub Court, Kangeyam with a specific request to the learned Judge to give a definite finding whether the documents sought to summoned under Rule 75 of the Civil Rules of Practice are relevant to determine the issues in the suit. It is the onus of the plaintiff and the first defendant to speak about relevancy and non relevancy of the documents.

16. The order dated 23.10.2019 in I.A.No.675 of 2019 is set aside, however with a request placed on the Sub Court, Kangeyam to re-hear the I.A.No.675 of 2019 and pass a considered order after taking into consideration Rule 75 of the Civil Rules of Practice. The learned Judge may also apply his / her mind to the fact that the petition had been filed under Rule 76 of the Civil Rules of Practice which is not the correct provision, but should have been filed under Rule 75 of the Civil Rules of Practice. Without any further observations, without any further orders I

would allow the Revision Petition and set aside the order, but however direct the learned Sub Judge, Kangeyam to re-hear the I.A.No.675 of 2019 and pass a detailed order adjudicating upon all the factors to be examined in an application filed under Rule 75 of the Civil Rules of Practice.

17. With the said observations, the C.R.P.(PD) No.195 of 2019 is dismissed and C.R.P.(PD) No.125 of 2021 is allowed. No order as to costs. Consequently, the connected miscellaneous petitions are closed.

23.06.2021

Internet: Yes/No
Index: Yes/No
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To

The Sub Court,
Kangeyam.

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C.V.KARTHIKEYAN,J.

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