

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P (PD) No. 122 & 123 of 2018

1.C.Chandiraprakash
2.C.Dhakshinamoorthy
3.S.Mani
4.R.Manickam
5.K.S.Sivamalai
6.R.A.Jaganathan
7.B.Pathamachand Jain

... Petitioners in both CRPs

Vs.

1.Sumathi
2.Sathyavathi
3.Karthikeyan
4.Alli
5.Banumathi
6.Balasubramaniam

... Respondents in both CRPs

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decree dated 05.12.2017 made in I.A.Nos.972 & 1069 of 2017 in O.S.No.665 of 2007 on the file of the Principal District Munsif, Salem.

For Petitioner	:	Mr.N.Manokaran
For R1 & R2	:	Mr.C.Jagadesh
For R3 to R6	:	Notice served

ORDER

These Civil Revision Petitions are filed against the fair and decreetal order dated 05.12.2017 made in I.A.Nos.972 & 1069 of 2017 in O.S.No.665 of 2007 on the file of the Principal District Munsif, Salem, thereby allowing the petition to permit the respondents to produce certain documents as documentary evidence.

2. The petitioners are the plaintiffs and the respondents are the defendants. The petitioners filed a suit for declaration declaring that the sale deed dated 15.05.2002 as null and void and permanent injunction in respect of the suit property. After closing the evidence of both sides, the respondents filed a petition seeking permission to receive additional documents. Both the petitions were allowed. Aggrieved by the same, the present Civil Revision Petitions.

3. The learned counsel for the petitioners would submit that after closing the plaintiffs side evidence the petitioners filed a petition to re-open and re-call of P.W.1. Both the petitions were dismissed. Aggrieved by the same the petitioners preferred CRP (PD) Nos.4034 & 4035 of 2016 before

this Court and the same were dismissed by an order dated 07.06.2017 and directed the Trial Court to consider the issue whether the Court can Suo-motu directed the respondents 1 and 2 to let in evidence as per the Order XVI Rule 14 of CPC on merits within three weeks from the date of receipt of a copy of the order, after giving an opportunity to the petitioners. Further directed that if the Trial Court comes to the conclusion that the evidence in the suit has to be re-opened, give an opportunity to the respondents 1 and 2 to let in evidence and the evidence already taken on behalf of the respondents 1 and 2 shall be eschewed.

4. Accordingly, the Trial Court re-opened the evidence of respondents 1 and 2 herein. At that juncture, the respondents 1 and 2 filed a petition seeking permission to receive the additional documents, which were not pleaded by them in the written statement. The documents which were sought to be produced before the Trial Court were not even whispered in the written statement filed by the respondents 1 and 2. It is completely against the provision of Order 8 Rule 1(A) of CPC. If the respondents 1 and 2 are allowed to produce those documents, it would cause prejudice to the

petitioners, since they were denied the opportunity of filing the reply statement for the newly introduced documents. Therefore, the Trial Court ought not to have allowed the petitions with a permission to produce the documents. It is contrary to the settled legal position mandated under Order 8 Rule 1(A) of CPC. The sudden introduction of documents which were never mentioned in the pleadings are not preferred to produce before the Court below. In fact, the respondents 1 and 2 were already granted opportunity to re-open their evidence and even then they did not file any application to produce those documents. After a period of ten years, they have come forward with the present application and introduced new documents, that too, without any pleading in their written statement.

5. Per contra, the learned counsel for the respondents would submit that the petitioners filed a suit for declaration, declaring that the sale deed dated 15.05.2002 registered vide document No.1095 of 2002 as null and void and permanent injunction in respect of the suit property. The said sale deed was registered in pursuant to the decree passed in O.S.No.51 of 2002. Therefore, the documents which were sought to be marked for relief

to the suit in O.S.No.51 of 2002, the petitioners continuously did not produce those documents which are connected to O.S.No.51 of 2002 and as such, the Court below has rightly permitted the respondents 1 and 2 to produce those documents. He further submitted that the Order 8 Rule 1(A) does not refer the pleadings upon the documents or relies upon any documents in his possession. Further, the pleadings contain details about the documents which are sought to be produced after filing the written statement. Therefore, the respondents 1 and 2 rightly filed a petition under Order 8 Rule 1(A) since the documents which are to be produced before the Court as evidence under the said Rule with a lieu of the Court, it shall not be received in evidence. Therefore, the respondents 1 and 2 sought permission of the Court below to receive the documents for letting in evidence. Further those documents can be marked subject to its proof relevancy and admissibility. All those facts shall be considered only during the trial and arguments of the suit. Therefore he prayed for dismissal of the suit.

6. Heard the learned counsel for the petitioners as well as the

learned counsel for the respondents 1 and 2.

7. The petitioners filed a suit for declaration and injunction in respect of the suit property. After closing the evidence, the petitioners filed a petition to re-open and re-call of P.W.1 and those petitions were dismissed. Thereafter, the petitioners preferred Civil Revision Petitions in CRP (PD) Nos.4034 & 4035 of 2016. While dismissing the Civil Revision Petitions by an order dated 07.06.2017, this Court has observed as follows :-

“17. The learned Judge is directed to consider the issue whether the Court can suo-motu direct the respondents 1 and 2 to let in evidence as per the Order XVI Rule 14 C.P.C on merits and pass orders within 3 weeks from the date of receipt of a copy of this order, after giving an opportunity to the petitioners and respondents 1 and 2 to put forth their case and after considering the issue, if the learned Judge comes to the conclusion that the evidence in the suit has to be reopened, give an opportunity to the respondents 1 and 2 to let in evidence and the evidence already taken on behalf of the respondents 1 and 2 shall be eschewed.”

Accordingly, the Court below re-opened the evidence of the defendants. At

that juncture, the respondents 1 and 2 filed a petition seeking permission to produce certain documents.

8. The learned counsel for the petitioners vehemently contented that it is impermissible in law that without completing in their evidence upon the documents, they are not permitted to produce any of the documents on their behalf.

9. A perusal of the written statement filed by the respondents 1 and 2 showed that there is no whisper about the said documents.

10. As rightly pointed out by the learned counsel for the defendants, where the defendants base his evidence upon the documents i.e. that the pleadings upon the documents, the pleadings should be aware about the documents which are sought to be produced along with the written statement or letter. Without any pleadings about those documents, the defendants cannot be permitted to introduce new documents other than the written statement. That apart, the suit is of the year 2007 and after a period

of ten years, the respondents 1 and 2 sought for permission to produce those documents.

11. A perusal of those documents reveals that they are connected to O.S.No. 51 of 2002. The petitioners already produced the judgment passed in O.S.No.51 of 2002 dated 11.11.2003 on the file of the Fast Track Judge No.II, Salem. Though, the maintainability and admissibility of those documents need not be decided as marking those documents is contrary to the settled legal position mandated under Order 8 Rule 1(A) of CPC i.e., the defendants in the suit who suddenly introduce strange documents which were never mentioned in their pleadings are contrary to the said legal position. It would also cause prejudice to the petitioners and as such the Trial Court ought not to have allowed the respondents 1 and 2 due to produce those documents which were not pleaded in the written statement.

12. In view of the above, the order passed in I.A.Nos.972 & 1069 of 2017 in O.S.No.665 of 2007, dated 05.12.2017 on the file of the Principal District Munsif, Salem, is hereby set aside and the Civil Revision

Petition is allowed. No costs.

08.04.2021

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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

To

The Principal District Munsif,
Salem.



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G.K.ILANTHIRAIYAN.J,



C.R.P.(PD) No122 & 123 of 2018

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