



C.R.P.(P.D).No.2027 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.11.2021

PRONOUNCED ON : 12.11.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

**C.R.P.(P.D)No.2027 of 2021 and
C.M.P.No.15410 of 2021**

1.Rajendran

2.Senthil Vadivelan

3.Jayachitra

...Petitioners

Vs.

Jamal Mohammed Fizal,
Represented by his Power Agent
1.S.Ahamed Ali

2.M.Akoramurthy

...Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside fair and decretal order dated 17.04.2021 made in I.A.No.7 of 2021 in O.S.No.298 of 2018 on the file of the Additional Sub Court, Mayiladuthurai.

For Petitioners : Mr.N.Manoharan

For Respondents : Mr.A.Palaniappan



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ORDER

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This petition is filed against the order passed in I.A.No.7 of 2021 in O.S.No.298 of 2016 on the file of the learned Additional Subordinate Judge, Mayiladudurai.

2.Respondents filed O.S.No.298 of 2018 for the relief of recovery of possession and for permanent injunction and other reliefs. When the suit was pending for examination of respondents/plaintiffs evidence, respondents filed I.A.No.7 of 2021 for production of the documents by condoning the delay in filing the documents. This application was filed under Order VII Rule 14 and Section 151 C.P.C. It is seen from the affidavit filed in support of this petition that the documents mentioned in I.A.No.7 of 2021 are important documents to prove the case of the respondents. These documents came to the possession of the respondents only now and therefore these documents could not be filed along with the plaint. Thus, the petition for condoning the delay in filing the documents was filed. This contention of the respondents was strongly opposed by the learned counsel for the petitioners alleging that there is absolutely no pleadings with regard to



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these documents in the plaint. In the absence of any pleadings with regard to these documents, petitioners are denied the opportunity of raising their objection to these documents in their written statement. That opportunity is lost to the petitioners. Moreover, there is no mention in the affidavit as to where these documents during all these times and in whose possessions these documents were. There is also no reference about when these documents came to the possession of the respondents. Some of these documents are required to be registered and therefore they are not admissible in evidence. Some of these documents are xerox copies, therefore they cannot be admitted in evidence. These documents can be marked only through petitioner Jamal Mohammed Fizal and not through Ahamed Ali who filed the petition as a power agent of the plaintiff under Order VII Rule 14 C.P.C. Only the documents are relied in the plaint can be received. Since, these documents are not relied in the plaint they cannot be received. In support of this submission, he pressed into service, the judgment reported in **2021 (4) L.W. 309 (M/s. Vijayalakshmi Palanisamy Charitable Trust Vs. Arulmigu Arunachaleswarar Tirukkoil)**. Therefore, the learned counsel for the



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petitioners submitted that the order passed by the learned Additional Sub Judge, Mayiladudurai in allowing the I.A.No.7 of 2021 is not in accordance with law and has to be set aside.

3.In response, the learned counsel for the respondents submitted that the respondents came to possess these documents only recently. There are enough pleadings available in the plaint that these documents are necessary documents to prove the case of the respondents. Merely because these documents are not specifically adverted to in the plaint, respondents cannot be denied the opportunity to produce the material documents before the Trial Court for proving their case. If these documents are not permitted to be produced and marked, respondents would be seriously prejudiced and it would affect the outcome of the case. Thus, he prayed for sustaining the order of the learned Additional Sub Judge, Mayiladudurai and for dismissal of this Civil Revision Petition.



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4.Considered rival submissions and perused the records.

5.The main objections raised by the learned counsel for the petitioners in receiving the additional documents filed by the respondents is that these documents had not been pleaded in the plaint. He drew the attention of this Court the provision in Order VII Rule 14 to highlight that only the documents relied in plaint can be received. Order VII Rule 14 reads as follows:

Production of document on which plaintiff sues or relies-

“1)Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

2)Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

3)A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be



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entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

4)Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.”

6.As per this order, the plaintiff is required to enter the documents upon which he choose or relies upon in a list and shall produce in the Court when the plaint is presented. Supposing any document is not in the possession or power of the plaintiff, he shall where possible state in whose possession or power it is. Relying on these provisions, learned counsel for the petitioners submitted that respondents have not stated anything about the documents now sought to be produced in the plaint, especially in the document list and there is no mention also with regard to these documents as to in whose possession or power the documents are. Therefore, in absence of any specific pleadings with regard to these documents and in the absence of any



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mention about in whose possession or power these documents were in the plaint, these documents cannot be received by condoning the delay.

7.Order VII Rule 1 deals with what are the particulars that have to be stated in the plaint. Order VII Rule 1 reads as follows:

Particulars to be contained in plaint.—*The plaint shall contain the following particulars:—*

- (a) the name of the Court in which the suit is brought;*
- (b) the name, description and place of residence of the plaintiff;*
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained;*
- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;*
- (e) the facts constituting the cause of action and when it arose;*
- (f) the facts showing that the Court has jurisdiction;*
- (g) the relief which the plaintiff claims;*
- (h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and*



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(i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits.

8.It is seen from this Rule that among other things detailed above, it is enough for the plaintiff to state the facts constituting the cause of action and when it arose. There is no specific requirement that plaintiff must state the documents and the evidence relied in support of the case. Even in Order VII Rule 14, it is only said that the plaintiff shall enter the documents on which he sues or relies upon, in a list and produce it when the plaint is presented. It is not specifically mentioned that the documents should be referred in the body of the plaint, that is, in the pleadings part.

9.Order VI Rule 2 requires only the pleading to state material facts and not evidence. Documents come within the realm of evidence and therefore it is not necessary to specifically state about the documents in the pleadings, in every case.



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Order VI Rule 2 reads as follows,

2. Pleading to state material facts and not evidence.—

- (1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.*
- (2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.*
- (3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.*

10.Coming to the facts of the case, third petitioner filed suit in O.S.No.139 of 2016 against the plaintiff Jamal Mohammed Fizal, a suit for bare injunction not to disturb her possession of the suit property on the basis of unregistered sale agreement dated 26.07.1983. It is claimed that entire sale consideration was paid and possession was handed over to the father of the third petitioner. The sale agreement was said to have been executed between one Akbar Ali, father-in-law of Jamal



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Mohammed Fizal and N.K.Murthy alias Kaliamurthy, father of third respondent. Based on the sale agreement dated 26.07.1983, the suit for bare injunction was filed in 2016 claiming protection of the possession under Section 53 A (The Transfer of Property Act). When the entire sale consideration was paid and the possession was handed over, it is not known why a sale agreement was executed instead of directly executing a sale deed.

11.The suit in O.S.No.298 of 2018 was filed by Jamal Mohammed Fizal through his power agents/respondents for the relief of recovery of possession, injunction, damages for use and occupation and other reliefs. It is claimed in the suit that Akbar Ali was the owner of the suit property. After his death on 25.01.1985, his wife Haseena Beevi became the owner of the suit property. On 05.09.2012, Haseena Beevi executed a settlement in favour of her only daughter Sameema Begum, the wife of Jamal Mohammed Fizal. Then Sameema Begam executed a settlement deed in favour of her husband Jamal Mohammed Fizal, in respect of suit properties on 13.06.2013. It is claimed that, third



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petitioner's father Kalia Murthy was employed by Akbar Ali to look after his farm lands. Haseena Beevi employed the second petitioner as her agent for collection of rent from the tenants in Haseena complex and other properties. Second petitioner has not rendered proper account and therefore, he was sent out of job. There was suit in O.S.No.20 of 2014 filed by the respondents against the petitioners when they tried to interfere with the possession and enjoyment of the suit property by Haseena Beevi and her daughter. Third petitioner filed a suit in O.S.No.139 of 2016 for the relief of injunction against the respondents and that was dismissed. Plaintiff Jamal Mohammed Fazil was living in abroad in connection with his business and his agents had not properly conducted the suit in O.S.No.20 of 2014 and therefore, the suit was dismissed. Meanwhile, the petitioners have encroached the suit 'B' schedule property, which forms part of 'A' schedule property. Subsequently Jamal Mohammed Fazil removed his former power agents and appointed present power agents. An application was filed in O.S.No.20 of 2014 for withdrawal of the suit with the permission to institute fresh suit on the basis of the subsequent events that had taken



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place. That petition was allowed and therefore the suit in O.S.No.298 of 2018 was filed for aforesaid reliefs.

12.The narration of the facts of the suits in O.S.No.139 of 2016 and O.S.No.298 of 2018 makes it clear that third petitioner claims protection of possession in the suit property on the basis of the sale agreement dated 26.07.1983. This sale agreement is denied by the respondents and respondents claimed that Jamal Mohammed Fazil is the owner of the suit property. The reading of the plaint in O.S.No.298 of 2018 clearly shows that plaintiff in this case has clearly pleaded and avered as to how he is entitled to the property and on what basis he claims right in the suit property. He also produced the list of documents relied on by him in support of his case. Sufficient pleadings are made in the plaint with regard to his entitlement to the suit property and the facts constituting the cause of action for filing the suit.

13.It is already found that it is not necessary to aver the evidence part in the pleadings. It is the submission of the learned counsel



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for the respondents that the documents now sought to be produced came to their hands only recently and therefore, they were not given in the list of documents and there is a delay. Order VII Rule 14 requires only wherever possible, the plaintiff is expected to state about the documents he is not in possession but somebody else is in possession of these documents. If this information is not available at the time of the filing the plaint, the delay in filing the documents cannot be attributed to the plaintiff. In the considered view of the Court, there are enough facts pleaded in the plaint with regard to the manner in which the plaintiff in O.S.No.298 of 2018 derive title and the facts constituting the cause of action for filing the suit. That is enough. Now the petition is filed only to condone the delay in producing the documents. In the considered view of this Court, the reasons stated for condoning the delay that the documents came to the hands of the respondents only now can be accepted.

14.It is observed in the judgment reported in **2021 (4) L.W. 309 (M/s. Vijayalakshmi Palanisamy Charitable Trust Vs. Arulmigu Arunachaleswarar Tirukkoil)** that **“In fact, both the side evidence**



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were over and arguments also over and when the suit was posted for filing written submissions on either side, the first respondent filed these petitions. The earlier petition in I.A.No.576 of 2016 was withdrawn after filing the counter unconditionally". It is seen that already a petition in I.A.No.576 of 2016 was filed to receive document and was not pressed. Not only that, the petition to receive an additional documents have been filed when the suit was posted for written submissions of the defendants. These two things had also weighed in the mind of the Court to come to the conclusion that petition filed to receive additional documents cannot be entertained. The fact, situation in this case is different. Only now the plaintiff side witnesses are being examined. If the respondents are denied the opportunity to produce the documents to prove their case, it is no doubt that their case would be seriously affected. In view of this matter this Court, finds no reason to interfere with the order of the learned Additional Sub Judge, Mayiladudurai and the said order is confirmed. The documents now sought to be produced can be received as additional documents and admitted in evidence subject to admissibility, relevancy and proof.



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15. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

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12.11.2021

Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No



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To

1. The Additional Sub-Judge,
Mayiladuthurai.
2. The Section Officer,
VR Section,
High Court of Madras.



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G.CHANDRASEKHARAN.J,

Ep

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