



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2021

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU

C.R.P(MD)No.132 of 2021

and

CMP(MD) .No.837 of 2021

O.Meenakshi Sundaram

... Revision Petitioner /
Respondent/Plaintiff

Vs.

Vadamuluammal

.... Respondent/Petitioner/
Defendant

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 11.12.2020, passed in I.A.No.4 of 2020 in O.S.No.359 of 2004 on the file of the District Munsif Court, Bodinayakanur, and to allow this Civil Revision Petition.

For Petitioner : Mr.K.Sekar

For Respondent : Mr.J.Barathan

O R D E R

This Civil Revision Petition is filed to set aside the order dated 11.12.2020, made in I.A.No.4 of 2020 in O.S.No.359 of 2004 on the file of the learned District Munsif, Bodinayakanur.

2. The revision petitioner is the plaintiff and the respondent herein is the defendants in the suit in O.S.No.359 of 2004.

3. Learned counsel for the petitioner would submit that he filed the suit for declaration and consequential permanent injunction against the respondent and after trial the suit was decreed in the petitioner's favour and an appeal was also preferred by the respondent in A.S.No.71 of 2014 was also dismissed. Against which, the respondent filed Second Appeal in S.A(MD).No.85 of 2018, which is pending before this Court. In the second appeal, the case was remanded to the trial Court directing the learned District Munsif, Bodinayakanur to dispose of the suit after giving sufficient opportunities to both parties and permitted the parties to file their replication and additional written statement confining to additional documents which are



permitted in C.M.P.(MD).No.9850 of 2018 in S.A.(MD).No.85 of 2018. This Court remanded the suit for fresh trial in It is the case of the revision petitioner that he has filed a suit in C.M.P.(MD).No.9850 of 2018 in S.A.(MD).No.85 of 2018. According to the petitioner, the order is very clear as to the liberty given to the parties to file their pleadings confining to additional documents permitted by this Court. According to the petitioner, in contrary to the above direction the respondent herein filed a petition in I.A.No.4 of 2020 to receive additional documents such as sale deed dated 01.12.1953 and 05.06.1990 and a register dated 13.12.2014. According to the petitioner the above documents are not relevant to the suit property and there is no reference in the pleadings of the defendant despite this the learned District Munsif has allowed the above petition and therefore, against the same the present revision petition has been filed.

4. Heard the learned counsel for the parties and perused the materials placed before this Court.

5. Admittedly, the suit of the year 2004 and it was decreed in favour of the petitioner plaintiff, against which, the appeal filed in A.S.No.71 of 2014 was dismissed. Against S.A.(MD).No.85 of 2018 was filed. In a above Second Appeal, CMP(MD).No.9850 of 2018 was filed for reception of additional document and after elaborate argument the judgment passed by the trial Court and the appellate Court was set aside and the matter was remanded back and in para 7 of the judgment, this Court observed as follows:-

"17.As a matter of fact, it is admitted that the plaintiff has not produced original mortgage deed and the document produced as Ex-A1 is only a certified copy of mortgage deed. Apart from that,when old documents are filed by rival claimants tracing their title through different sources, the question of title cannot be tested on the basis of age of documents. In a case like this, the source of title has to be ascertained based on other materials and revenue documents. In this case, the extent of property in paimash No.837 is admittedly one third of 5 Kuzhi, ie., around 1 Acre. The defendant could claim title only in respect of an extent of 75 cents in paimash No.837 as per Ex-B1. Hence, it is possible for accommodating the claim of both sides. This can be done only, if further opportunity is given to both sides to lead evidence to prove their title and enjoyment. The plaintiff did not plead that his father had title as a co-owner in respect of any portion of suit property. The Courts below have not considered the documents in a proper perspective as pointed out above. The discrepancy in the description of document is not explained. Hence,



the judgment and decree of the Courts below are liable to be set aside and the matter has to be remanded. The additional documents filed are original patta and kist receipts issued by erstwhile Zamin. The appellant though has satisfied this Court for reception of these documents as additional evidence, their authenticity, genuineness, proof, admissibility, relevance, etc., have to be proved in the manner known to law"

6. The necessity to file additional documents arose only because of the subsequent amendment petition filed by the petitioner herein which was partly allowed by the Court below and thereafter by this Court in CRP(MD).No.308 of 2020. Now the plaintiff cannot take the plea that the order in SA(MD).No.85 of 2018 was confined to filing of the additional document referred in Second Appeal only and the learned Judge by the impugned order had rightly allowed the application. I do not find any infirmity in the order passed by the learned Judge.

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

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pkn

To

1. The District Munsif,
Bodinayakanur.

2.The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.K.SEKAR, Advocate (SR-4221[F] dated 10/02/2021)

C.R.P (MD) No.132 of 2021
10.02.2021

KM (03.03.2021) 3P 5C