



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.07.2021

Pronounced on : 26.07.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P. (PD) (MD) .No.563 of 2021

WEB COPY

Chenthilkumar

:Petitioner/Petitioner/1st defendant

Vs.

1.Kottar Ezhavar Samudaya Vagai
Arumugaperumal Pillayarswamy Temple,
Kottar,
Agastheeswaram Taluk,
Kanyakumari District,
rep. by its Manager K.S.Muthu

2.Rajasekar
3.Madhusekar
4.Sarojini
5.Dhanalekshmi
6.Chandra Devi
7.Thilakavathi

(Notice to the respondents 2 to 6 is not
necessary since they are unnecessary parties
for the disposal of CRP) : Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 17.02.2021 made in I.A.No.8 of 2021 in O.S.No.24 of 2015 on the file of II Additional Sub Court, Nagercoil, Kanyakumari District.

For Petitioner : Mr. M. Suri

For 1st Respondent : Mr. A. Arumugam

O R D E R

The Revision is directed against the order dated 17.02.2021 passed in I.A.No.8 of 2021 in O.S.No.24 of 2015, on the file of the II Additional Sub Court, Nagercoil, Kanyakumari District, dismissing the petition filed under Order 13 Rule 9 CPC for returning of the document.

2. The revision petitioner is the first defendant and the first respondent / plaintiff has filed the suit in O.S.No.24 of 2015 for recovery of possession from the revision petitioner and for permanent injunction restraining the revision petitioner and anybody



claiming right under him from causing any encumbrance, alteration and alienation over the suit property till delivery and for future mesne properties.

3. It is evident from the records that after the defendants side evidence was over and when the suit was pending for the plaintiffs' further evidence, after reopening of the case, the first defendant has filed the above application for returning of the original sale deed produced by him and marked as Ex.B1 at the trial.

4. The case of the revision petitioner is that the original sale deed was exhibited as Ex.B1 on 06.09.2018, that the petitioner is in need of said document for submitting the same before the Revenue Authorities in connection with mutation in his name in the revenue records, that since the original sale deed is available in the Court, he is unable to carry out necessary changes in the mutation available with the Agastheeswaram Thasildar, that he has to necessarily substitute the certified copy of the same and that he may be given the original document Ex.B1 in lieu of substitution of the certified copy of the same.

5. The first respondent / plaintiff has filed a counter statement that the suit property is owned by the plaintiff, that the petitioner even after knowing that the suit property is owned by the plaintiff has changed the patta in his name, that the petitioner's Ex.B2 sale deed is legally invalid and the petitioner has got no title and that since it is not proper to return the original Ex.B1, the petition is liable to be dismissed. The learned Subordinate Judge, after enquiry has passed the impugned order on 17.02.2021 dismissing the above petition. Aggrieved by the said order, the first defendant has come forward with the present revision.

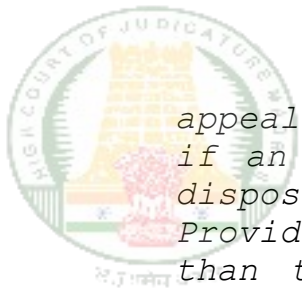
6. The learned trial Judge, by observing that the petitioner has sought for return of sale deed for the purpose of patta change, that the plaintiff has disputed the genuineness of the said document and that the reason advanced by the petitioner is not acceptable, dismissed the petition.

7. It is necessary to refer Order 13 Rule 9 CPC.

"9. Return of admitted documents.- (1) Any person, whether a party to the Suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same-

(a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and

(b) where the suit is one in which an appeal is allowed, when the court is satisfied that the time for preferring an



appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of:

Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying there for-

(a) delivers to the proper officer for being substituted for the original,- (I) in the case of a party to the suit, a certified copy, and

(ii) in the case of any other person, and ordinary copy which has been examined, compared and certified in the manner mentioned in sub-rule (2) of rule 17 of Order VII, and

(b) undertakes to produce the original, if required to do so:

Provided also, that no document shall be returned which, by force of the decree, has become wholly void or useless.

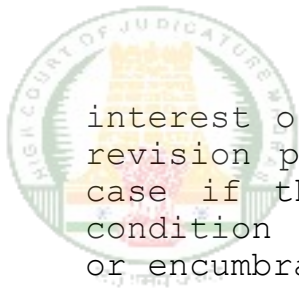
(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it."

8. A reading of the above provision makes it clear that a person who produces a document in the court is entitled to receive / get back the same on the following circumstances:

1. Sub Rule 1(a) deals with a case where the suit has been disposed of, against which no appeal is provided.
2. Sub Rule 1(b) contemplates where the appeal is allowed, if no appeal is filed within the time stipulated for preferring the appeal or appeal has been filed and is disposed of.
3. The proviso of Sub Rule 1 deals with the case which does not fall under the above mentioned two circumstances and that the document can be returned at any time earlier than that prescribed by Sub Rule 1, if a party substitutes a certified copy of the document, which is already marked and undertakes to produce the original if required to do so.

9. On an application being made by a party under the above proviso of Order 13 Rule 9 CPC, the documents are necessarily returned if the application is in the proper form and the applicant is ready to comply with the conditions of substituting the certified copy of the document and undertaking to produce the original if required to do so.

10. The contention of the first respondent that in case if the petitioner is permitted to get back the original sale deed, there is every possibility of the petitioner making alienation or encumbrances over the suit property or mutation of revenue records as alleged by the petitioner himself and consequently, the right and



interest of the plaintiff will get affected and that therefore, the revision petitioner is not entitled to receive the document or in case if the Court is inclined to return the document, necessary condition has to be imposed restraining him from making alienation or encumbrance or a mutation of revenue records.

WEB COPY

11. No doubt, the plaintiff has filed the suit for recovery of possession of the suit property and for permanent injunction restraining the revision petitioner from causing alienation or encumbrances over the suit property. According to the plaintiff, the document sought to be returned is a legally invalid document and no right was accrued on the revision petitioner through the said sale deed. If that be the case of the plaintiff, I am at loss to understand as to why the plaintiff has been opposing the revision petitioner to get his documents. In the case on hand, as already pointed out, the plaintiff has filed the certified copy of Ex.B2 along with the petition under Order 13 Rule 9 CPC. Moreover, in the affidavit filed in support of the above petition, he has given a specific undertaking for the purpose of production of the original sale deed as and when called upon by the Court. Since the conditions are complied by the revision petitioner, required under the proviso Sub Rule 1 of Order 13 Rule 9 CPC, he certainly entitled to get back his original document and hence, the decision of the trial Court in dismissing the petition is not good in law and the same is liable to be set aside.

12. In the result, this Civil Revision Petition is allowed and the impugned order dated 17.02.2021 made in I.A.No.8 of 2021 in O.S.No.24 of 2015 on the file of II Additional Sub Court, Nagercoil, Kanyakumari District is set aside. No costs.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

trp

To

The II Additional Subordinate Judge, Nagercoil, Kanyakumari District.

+1 CC to M/s.M.SURI, Advocate (SR-23842[F] dated 26/07/2021)

C.R.P. (MD).No.563 of 2021
26.07.2021

ES (CO)

LR (09.08.2021) 4P 3C

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