BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.01.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(MD)No.1081 of 2020
and
CMP(MD)No.7035 of 2020

Mohammed Jiavudeen ... Petitioner/ 1st Respondent/Plaintiff

vs.

1)Sahul Hameed ...1st Respondent/Petitioner/ 2nd Defendant

2)Hithayathullah ...2nd Respondent/2nd Respondent/1st Defendant

Petition filed under Section 115 of the Civil Procedure Code, against the fair and decreetal order dated 05.11.2020 made in I.A.No.40 of 2020 in O.S.No.42 of 2012 on the file of the Additional District Judge, Ramanathapuram, allowing the interlocutory application.

For Petitioner : Mr.P.Athimoolapandian

For Respondents : Mr.D.Senthil

ORDER

This petition has been filed against the fair and decreetal order dated 05.11.2020 made in I.A.No.40 of 2020 in O.S.No.42 of 2012 on the file of the Additional District Judge, Ramanathapuram, allowing the interlocutory application.

2.The learned counsel for the petitioner would contend that I.A.No.40/2020 has been filed under Section 75 CPC, to grant permission to examine the Income-Tax Assessing Officer. This Court by order dated 21.07.2020, in CMP(MD)Nos.10460 and 11526 of 2018 in A.S(MD)No.145 of 2013 and CMP(MD)No.8452 of 2019 in A.S.(MD)No.162 of 2013, has remanded the above cases to the Additional District Judge, Ramanathapuram, and permitted the 1st respondent for marking additional documents. Since the documents are all photocopies of the assessment orders passed by the Income-Tax Assessing Officer, the same was objected to by the revision petitioner. The copies were marked on objection. Thereafter, the 1st respondent has sought to examine the Assessing Officer of the Income-Tax Department to prove the genuineness of the documents by filing I.A.No.40/2020 in O.S.No.42/2012, which was allowed by the learned Judge, against which, the present revision petition has been filed.

3.The learned counsel for the petitioner would contend that the learned Additional District Judge has misconstrued the order dated 21.07.2020, where it has been allowed only to mark the additional document and no order has been passed to let in further evidence and therefore prayed to set aside the order.

4.Heard the learned counsel for the petitioner as well as the respondents.

5.Before discussing the merits of this case, it is to be noted that the suit has been filed by the revision petitioner/plaintiff mainly contending that the sale deed dated 29.12.2011 had been executed under threat, undue influence, coercion and criminal intimidation and that he had not received any amount towards sale consideration for relinquishing his right in the land in dispute and towards goodwill for relieving from the partnership firm and that he had been running the firm as a key person. The contention of the respondents herein/defendants 2 and 1 while filing the petitions in CMP(MD)Nos.10460 and 11526 of 2018 in A.S(MD)No.145 of 2013 and CMP (MD)No.8452 of 2019 in A.S.(MD)No.162 of 2013, was that the revision petitioner/plaintiff has relinquished his right in the land in which the firm is running and also discharged his partnership on receipt of Rs.25 lakhs on 30.12.2011, for which, he has given a receipt under Ex.P19. Though the revision petitioner/plaintiff had stated that he has not received amount from the 2nd respondent herein/1st defendant, in the income tax return statements, the petitioner/plaintiff himself admitted that on receipt of the amount, he relinquished his right from the partnership firm. Therefore, the respondents herein wanted to mark those documents as additional documents and they had also stated that most of the documents are after the suit documents and therefore, they could not produce the same before the court during trial and that some of the documents were filed by the petitioner/plaintiff himself in yet another suit filed by him in C.S.No.608 of 2016 and therefore, there is no wilful default or delay on the part of the respondents in filing the above CMPs and prayed to allow the same.

6.Considering the submissions of the learned counsel for the petitioners and respondents therein, this Court by order dated 21.07.2020, in CMP(MD)Nos.10460 and 11526 of 2018 in A.S(MD)No.145 of 2013 and CMP(MD)No.8452 of 2019 in A.S.(MD)No.162 of 2013, has ordered as follows:-

> 5.It is seen that the most of the documents sought to be produced by the petitioners are only Income Tax

Returns of the first respondent/plaintiff as well as the Firm, and also the Assessment orders for the years 2010-11 and 2012-2013, and that most of them are only after the suit documents. In the documents sought to be produced, the first respondent/plaintiff himself stated that he has received amounts from the firm and therefore, this Court is of the view, they are relevant for enabling the Court to adjudicate the lis properly and to arrive at a proper decision.

6.Time and again, it has been held that when the documents are taken in additional evidence, an opportunity should be given to other party to lead evidence in rebuttal. In such view of the matter and having regard to the above facts, the Additional District Judge, Ramanathapuram is directed to permit the petitioners herein to mark the additional documents through evidence; give an opportunity to the other side to adduce evidence in rebuttal; record evidence and send the proceedings before this Court, within a period of four months from the date of receipt of records from this Court. Both the parties are directed to appear before the trial Court and cooperate with the trial Court. These petitions are accordingly ordered.

7.The Registry is directed to send the documents filed herein in a sealed cover to the trial Court forthwith.''

7.Admittedly, there is no appeal filed against the above order. The above order is very clear as to permitting the respondents/defendants to mark additional documents through evidence and there is no ambiguity in the order and the learned Additional District Judge has also not misconstrued the order dated dated 21.07.2020. As contended by the learned counsel for the respondents, the documents sought to be marked as additional documents, are income tax assessment orders of the present petitioner/plaintiff which are in the custody of the petitioner himself and therefore, while hearing the matter, it is for the learned Judge in the appeal to decide whether the respondents herein/petitioners in the above CMPs had made a foundation for marking those documents as secondary evidence and of course, to prove the genuineness of the documents as it is the assessment orders of the petitioner, the Court below has rightly allowed the petition to examine the Income-Tax Assessing Officer, where I do not find any infirmity. If at all the petitioner is aggrieved by the order dated 21.07.2020, he ought to have filed appeal against the said order before the Hon'ble Supreme Court, instead, he has chosen to file the present revision petition which in my considered opinion is a clear abuse of process of the court.

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

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Additional District Judge,
Ramanathapuram.

+1 CC to Mr.D.SENTHIL, Advocate (SR-1714[F] dated 21/01/2021)

CRP(MD)No.1081 of 2020
DATED : 21.01.2021

(SSS)
KV(09.02.2021) 4P 3C