



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) Nos.1911 to 1913 of 2014
and
M.P.No.1 of 2014

Carmel Paul Roach .. Petitioner/Petitioner/
Plaintiff in all cases

-vs-

T.S.Madasamy .. Respondent/Respondent/
Defendant in all cases

Prayer :- Petitions filed under Article 227 of the Constitution of India to set aside the fair and decretal orders passed in I.A.Nos.36, 37 and 38 of 2014 in O.S.No.203 of 2010 dated 01.07.2014 on the file of the Principal District Munsif cum Judicial Magistrate at Nanguneri.

For Petitioner : Mr.S.R.Anbarasu
(In all cases)

For Respondent : Mr.D.Nallathambi
(In all cases)

COMMON ORDER

The plaintiff in the suit in O.S.No.203 of 2010 is before this Court challenging the order passed by the learned Principal District Munsif cum Judicial Magistrate, Nanguneri in the following applications:-

(i) I.A.No.36 of 2014 is an application filed to reopen the suit in O.S.No.203 of 2010;

(ii) I.A.No.37 of 2014 is an application filed to recall P.W.1 for marking the documents; and

(iii) I.A.No.38 of 2014 is filed to receive the document.

These applications were dismissed by the learned Principal District Munsif cum Judicial Magistrate, Nanguneri, by orders dated 01.07.2014.



2.It is necessary to briefly allude to the facts in order to appreciate the challenge to the said order.

3.The plaintiff has filed the suit in O.S.No.203 of 2010 on the file of the Principal District Munsif cum Judicial Magistrate, Nanguneri, for an injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The petitioner had claimed a right to the property on the basis of the Settlement Deed dated 30.12.2009 executed by his father Jeganathan Nadar in his favour. When the proceedings were at the stage of arguments, the plaintiff had filed the above applications for the reliefs as stated supra.

4.It is the case of the plaintiff that he had come across a patta dated 15.03.1976 only now and the same has to be presented to substantiate his case that he is in possession of the suit property.

5.The respondent had filed a counter stating that there is no reference to the said document in the plaint and therefore, it cannot be entertained at this stage.

6.The learned District Munsif cum Judicial Magistrate, Nanguneri, had dismissed all the applications on the ground that the plaintiff has rested his case on the basis of the settlement deed dated 30.12.2009 and there are no pleadings to the proposed patta. Therefore, the applications cannot be entertained. Challenging the same, the revision petitioner is before this Court.

7.Mr.S.R.Anbarasu, learned counsel appearing on behalf of the petitioner would contend that there is sufficient pleading in the plaint, since it is the petitioner's case that the suit property belonged to his father Jeganathan Nadar and his brothers. The patta, which is now sought to be marked, stands in the name of his father Jeganathan Nadar and therefore, there is no new case projected by receiving the above document.

8.Learned counsel for the respondent reiterated the contentions in the counter.

9.Heard the learned counsel on both sides and perused the records.

10.The suit is filed on the basis that the property belongs to the plaintiff's ancestor viz., his grandfather from whom his father and brothers had inherited the property and thereafter, his father had settled the suit property in his favour. The patta stands in the name of his father Jeganathan Nadar, which is a document, which would go a long way to substantiate the plaintiff's pleadings.



11.This Court is of the opinion that the court below has totally erred in observing that there is no pleading for the said document. It is needless to state that proof and relevancy of a document has to be considered only at the time of its marking. Therefore, the orders dated 01.07.2014 passed in I.A.Nos.36, 37 and 38 of 2014 in O.S.No.203 of 2010 by the learned Principal District Munsif cum Judicial Magistrate, Nanguneri are set aside. The learned Principal District Munsif cum Judicial Magistrate, Nanguneri, is directed to dispose of the suit within a period of one month from the date of receipt of a copy of this order.

12.In the result, the Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

abr

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 Principal District Munsif
cum Judicial Magistrate Court, Nanguneri.

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-37326[F] dated 03/12/2021)

C.R.P.(PD) (MD) Nos.1911 to 1913 of 2014
Dated: 02.12.2021

RD(20.12.2021) 3P 3C