



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.12.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P (MD)No.2037 of 2021

and

C.M.P (MD)No.10924 of 2021

WEB COPY

S.Chinnadurai

... Petitioner/Respondent/Plaintiff
Vs.

E.Antonyraja

... Respondent/Petitioner/Defendant

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 23.09.2021 passed in I.A.No.02 of 2021 in O.S.No.11 of 2018 on the file of the learned 1st Additional District Munsif Court, Tirunelveli.

For Petitioner

: Mr.T.Thirumurugan

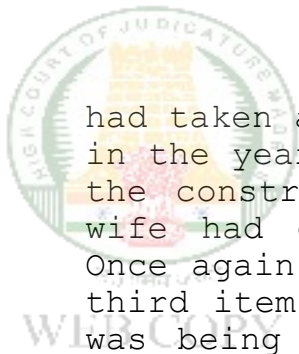
ORDER

The revision petitioner seeks to challenge the order passed by the learned Additional District Munsif, Tirunelveli, allowing an interlocutory application in I.A.No.2 of 2021 in O.S.No.11 of 2018 filed by the respondent/defendant to condone the delay in receiving the documents under the provision of Order 8 Rule 1 (A) of CPC.

2.The facts in brief are as follows:-

(i) The revision petitioner has filed O.S.No.11 of 2018 on the file of the District Munsif, Tirunelveli for a declaration that the suit second and third item of properties belong to the plaintiffs and consequently, direct the defendant to hand over the possession and also for a mandatory injunction to the defendant to remove the obstructions put up in the suit items 2 and 3.

(ii) The plaintiff's case is that item Nos.2 and 3 of the suit schedule properties form part of the suit first item of property. The defendant have encroached and put up constructions on the suit 2 and 3 items of properties. The properties originally belong to the plaintiff's father Sudalai on the basis of an assignment deed of the year 1963. The plaintiff's father was in absolute possession and enjoyment of the property till his death, i.e., upto 06.10.2008 and thereafter, the plaintiff inherited the same along with his mother and sister. However, the plaintiff's mother and sister had released their share in the suit first item of property in favour of the plaintiff and therefore, the plaintiff is the absolute owner of the suit schedule properties. While so, the defendants who had no right to the property, had started interfering in the same. They



had taken advantage of the absence of the plaintiff from the village in the year 2010. During which time, they had trespassed and put up the construction in the second item of property. The plaintiff's wife had given a complaint on 28.02.2010 against the defendant. Once again, there was a trespass and obstruction put up in the suit third item of property on 24.12.2017, from which date, construction was being put up in the property in question and this forms the third item of property. The plaintiff would submit that the defendant has no right to the property and therefore, filed suit.

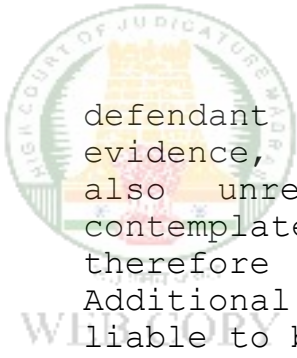
(iii) It is the case of the defendant that in the year 2010, the plaintiff had demolished the old construction and put up a new construction in the 1½ cent situated in the western half. At that time, they tried to convert the defendant's exclusive wall in to a common wall. This was prevented by the defendant and therefore, the plaintiff filed a false complaint against the defendant. Thereafter, the plaintiff put up the construction leaving 1½ feet for repairing and maintaining the wall. This fact has been suppressed in the plaint. The defendant's father had mutated the revenue record and transferred the tax in his name as soon as he had purchased the suit schedule property. The defendants had denied the allegation that they had trespassed and put up the construction. Pending the suit, the defendant had come forward to file the impugned petition to receive eight documents.

(iv) The defendant in the affidavit filed in support of the said application has stated that these documents were procured after great deal of search and therefore, the defendant was unable to file it along with the written statement and therefore, the delay may be condoned.

(v) The plaintiff had filed a counter contending that the very petition was not maintainable. As regards the documents 1 to 3, the defendant pleaded that they cannot be received since they are documents that had to be compulsorily registered and they were all unregistered documents. The plaintiff also had objection to all of the other documents as well. The plaintiff has also pleaded delay and that the delay had not been properly explained.

(vi) The learned First Additional District Munsif, Tirunelveli, by order dated 23.09.2021 was pleased to allow the said application and with reference to the documents 1 to 3, he had made it clear that the documents could be admitted, if they were properly stamped. Challenging the same, the petitioner is before this Court.

3. The learned counsel appearing for the petitioner would submit that the order suffers from a total non-application of mind, since the learned Judge has totally overlooked the fact that the documents which are not registered cannot be received into evidence and the payment of deficit stamp duty will not cure the defect. The documents 1 to 3 which are now produced on the side of the



defendant are unregistered sale deeds which cannot be marked in evidence, since they are not only improperly stamped, but they are also unregistered. These documents fall under the category contemplated in Section 17 of the Registration Act. He would therefore submit that the order passed by the learned First Additional District Munsif, Tirunelveli, is totally erroneous and liable to be set aside.

4. Heard the learned counsel for the petitioner and perused the records.

5. The impugned order only condones the delay in receiving the documents and these documents are only received to the file of the Court. It needless to state that the marking of the documents is another procedure, which is done at the time of examination of witnesses. Every document that is sought to be marked is subject to proof and relevancy. In case, an unregistered document is sought to be marked, it is well open to other side to object to its marking and record the objection. Such a liberty has also been given by the learned First Additional District Munsif, Tirunelveli, as the learned Judge has observed as follows:-

"மேற்கண்ட ஆவணத்தை பொருத்து தனது ஆட்சேபணையை எதிர்மனுதாரர் குறித்து செய்யும் பொழுதும் சாட்சியை குறுக்கு விசாரணை செய்யும் பொழுதும், பதிவு செய்து கொள்ள வழியுள்ள நிலையில் இம்மனுவை அனுமதிப்பதே நீதியின் நலனுக்கு உகந்தது என்று இந்நீதிமன்றம் முடிவு செய்கிறது."

6. Therefore, it is very clear that the learned First Additional District Munsif, has only received the documents and the documents are yet to be admitted in evidence which would be the stage at which each of those documents could be objected to and not permitted to be marked in evidence and if so objected, such documents cannot be received in evidence without considering the objection. Therefore, I do not find any infirmity in the order passed by the learned First Additional District Munsif, Tirunelveli.

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

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2022

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 1st Additional District Munsif,
Tirunelveli.

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SP (CO)

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