



CRP.PD.Nos.1118, 1119 & 1121/2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.PD.Nos.1118, 1119 & 1121/2019 & CMP.No.7299/2019

[Physical Model]

Karthik

.. Petitioner in
all CRPs

Vs.

Thirunavukarassu

.. Respondent
in all CRPs

Common Prayer:- Civil Revision Petitions filed under Article 227 of the Constitution of India against the order and decree dated 19.02.2019 in IA.Nos.18/2019, 19/2019 and 20/2019 in OS.No.709/2013 on the file of the learned I Additional District Munsif, at Pondicherry.

For Petitioner in all
the Petitions

: Mr.R.Rajarajan

For Respondent in all
the Petitions

: Mr.R.Thiyagarajan



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COMMON ORDER

- (1) The above Civil Revision Petitions have been preferred against the orders dated 19.02.2019 made in IA.Nos.18/2019, 19/2019 and 20/2019 in OS.No.709/2013.
- (2) The respondent in all the Civil Revision Petitions is the plaintiff in OS.No.709/2013 before the learned I Additional District Munsif, Puducherry. The suit was for declaration of plaintiff's easementary right in respect of the suit schedule property for ingress and egress from every point of plaintiff's "A" Schedule property. The suit is also for permanent injunction restraining the defendant in the suit from interfering with the plaintiff's peaceful enjoyment of "C" Schedule property by any obstruction or construction of any building in the suit "C" Schedule property. The other prayer for injunction is also consequential to the main reliefs.



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- (3) The suit was contested by the revision petitioner/defendant on many grounds. After evidence of plaintiff and defendant was over, the revision petitioner/defendant filed an application in IA.No.18/2019 to reopen the case to mark the document, namely, the certified copy of the judgment and decree in OS.No.573/1976 dated 12.06.1977. Another application in IA.No.19/2019 was filed to recall the defendant himself as DW1 to mark the said document. The 3rd application in IA.No.20/2019 was filed to condone the delay in filing the document namely the certified copy of the judgment and decree in OS.No.573/1976.
- (4) The respondent/plaintiff contested the application mainly on the ground that the judgment and decree in OS.No.573/1976 is not binding on the parties to the present suit as the said suit had been filed by the predecessor in interest of plaintiff as against a third party. It was also pointed out by the respondent/plaintiff that the revision petitioner has not pleaded a case in tune with the judgment in OS.No.573/1976. It was contended by the respondent herein



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that the revision petitioner has filed the applications only to drag on the proceedings without specific plea in the written statement.

- (5) The Trial Court accepted the case of the respondent/plaintiff and dismissed all the Interlocutory Applications mainly on the ground that neither the defendant nor his predecessors are parties to the judgment and that therefore, the judgment is not between inter-parties. It is also held by the Trial Court that the admissibility and relevancy of the document itself is in question in the present suit. Pointing out that the suit is based on easementary right, it was further observed by the Lower Court that the defendant had not raised any plea referring to the judgment which is sought to be marked. After holding that there was no explanation on the part of the defendant as to why the document was not pleaded nor produced before the Trial Court at the earliest point of time. The Trial Court dismissed the applications. Aggrieved by the same, the present Civil Revision Petitions are filed.



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- (6) From the averments made in support of the affidavits filed in support of the Interlocutory Applications before the Trial Court, it is seen that the revision petitioner/defendant has filed the applications as the said document, namely, the judgment and decree in OS.No.573/1976 dated 12.06.1977, will throw some light to sustain his plea that the plaintiff in the suit has no right of easement. The Court need not give much focus at this point whether the document will prove the case of the revision petitioner/defendant. This Court is of the view that the document may throw some light with regard to the previous claim made by the plaintiff's predecessors in interest. The certified copy of the judgment and decree shows that one Padmanabhan, predecessor in interest of plaintiff filed the suit for bare injunction and that the suit filed by him was dismissed by the Court below holding that the said Padmanabhan has not proved his possession over the suit property.
- (7) It is to be noted that the present suit is for establishing easementary



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right which may not require a person to prove actual physical possession of the property. However, the judgment in the previous suit may be of some assistance to this Court to decide/adjudicate the issues more effectively. Merely because the document was not referred to in the written statement, the applications cannot be dismissed as it has been done by the Trial Court. The revision petitioner is not a party to the earlier suit. He has produced the certified copy of the judgment and decree in OS.No.573/1976 probably by getting the copy of the same through other sources. It cannot be presumed that the revision petitioner was aware of the document even earlier.

(8) In the above circumstances, this Court is unable to sustain the orders of the Trial Court holding that the applications cannot be allowed to mark the document on the ground that the defendant has not produced the said document earlier.

(9) In view of the foregoing discussions, this Court is of the view that



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(10) In the result, the Civil Revision Petitions are **allowed** setting aside the order dated 19.02.2019 made in IA.Nos.18/2019, 19/2019 and 20/2019 in OS.No.709/2013 by the learned I Additional District Munsif, at Pondicherry. IA.Nos.18/2019, 19/2019 and 20/2019 stand **allowed**. No costs. Consequently, connected miscellaneous petition is closed.

11.01.2022

AP
Internet : Yes

To
The I Additional District Munsif
Puducherry.



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S.S.SUNDAR, J.,

AP

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