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C.R.P. No. 1662 of 2019

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 14.10.2022

CORAM:

**THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI**

C.R.P.No.1662 of 2019  
and  
C.M.P.No. 10771 of 2019

T.R.Govindan (died)

2. Porkodi

W/o. Late T.R.Govindan

3. R.G.Raghavanayagam

S/o. Late T.R.Govindan

(Petitioners 2 and 3 brought on record as LRs  
of deceased sole petitioner T.R.Govindan vide  
court order dated 26.09.2022 made in C.M.P.  
No.15594 to 15596 of 2022 in C.R.P.No.  
1662/2019)

... Petitioners

Vs.

1. K.Ganesan,

S/o. V.Kalyanaraman

2. R.Ganeshan,

S/o. A.Ramasamy Pillai

... Respondents



C.R.P. No. 1662 of 2019

**PRAYER:** Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the fair and decreetal order passed in I.A.No.3345 of 2018 in O.S.No. 4918 of 2015 dated 12.03.2019, on the file of the XIV Asst. City Civil Court, Chennai.

|                 |                                                   |
|-----------------|---------------------------------------------------|
| For Petitioners | : Mr.V.Ravi for<br>Mr.M.Devaraj                   |
| For Respondents | : Mr.Francis Cedric Dcruz for<br>Mr.P.B.Ramanujam |

### **ORDER**

The revision petitioner herein is T.R.Govindan, who is 1<sup>st</sup> defendant in the suit in O.S.No.4918 of 2015 on the file of XIV Asst. City Civil Court, Chennai. The 1<sup>st</sup> respondent/plaintiff filed the said suit for the relief of declaration declaring General Power of Attorney dated 11.11.2014 said to be executed by him in the name of 1<sup>st</sup> defendant as null and void and other consequential relief prayed to declare the sale deed dated 20.11.2014, which was executed by the 1<sup>st</sup> defendant in favour of 2<sup>nd</sup> defendant as null and void.



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2. In the said suit, both the defendants contested the suit by filing their written statement. The additional written statement also filed by the defendants, in which they have mentioned about the second appeal in S.A.No. 620 of 2007 stating that the suit property is pending for adjudication in that appeal and the plaintiff is not having any right over the property. Thereafter, the plaintiff filed an Interlocutory Application in I.A.No. 3345 of 2018 under Order 7 Rule 14 of C.P.C. to receive additional document on the side of petitioner. However, in respect of title with respect to the suit property was challenged by filing Second Appeal in S.A.No.620 of 2007 and the same was disposed of on 22.04.2021, thereby, the suit in O.S.No.80 of 2004, which was filed by one Mohanamibika was dismissed. Thereafter, the 1<sup>st</sup> respondent/plaintiff wanted to produce the said judgment and decree of second appeal in the suit as additional document. The said application was strongly objected by the 2<sup>nd</sup> defendant stating that the 1<sup>st</sup> respondent/plaintiff has not raised any pleading in the plaint, without which, he is not entitled to mark the same. So, without pleading, the copy of judgment and decree cannot be received as additional document. On



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considering both sides, the trial court allowed the application holding that the case is posted for marking of documents by P.W.1. At this stage, the plaintiff filed the said application and prayed to mark the judgment and decree passed in the suit declaring title with respect to the suit property is just and necessary and if at all, any objection on the side of defendants, they can very well raise their objections at the time of marking the said document and subject to proof and relevancy, the document is directed to be received by allowing the said application. Challenging the said order, the 1<sup>st</sup> defendant preferred this Civil Revision Petition stating that the learned judge failed to take note of the fact that though the plaintiff filed the application under Order 7 Rule 14 of C.P.C. to receive additional document, only document related to the averments made in the plaint alone can be marked and the plaintiff can be permitted to mark the document, which was not shown in the list of documents, as such is erroneous one, besides, there is no pleading in the plaint with regard to the said suit proceedings. Hence, the order passed by the court below is arbitrary and unsustainable and prayed to set aside the same. In support of his contentions, he relied on the following authorities :-



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I. This Court by an order dated 02.02.2010 in the case of **Harkesh**

**Singh and others vs. Ved Raj**, has held as follows:-

*"Case Note :*

*Civil – Additional affidavit – Dismissal of application filed under Order 7 Rule 14 of Code of Civil Procedure, 1908 (CPC) for taking additional affidavit on record – Application dismissed – Held, the petitioners failed to file the documents along with the written statement – Sole ground stated by the petitioners was that due to inadvertence they did not file the documents – Inadvertence no ground for allowing an application for production of documents at the stage of evidence – Hence, petition dismissed."*

II. This Court in its judgment reported in **2005 (10) CTCOL 514**, in the case of **Sornam, R. Gowthaman and R.Vennila vs. P.N.Thevachiammal**, has held as follows:-

*"10. The additional written statement was filed on 23.01.2002. The additional issues were framed on 16.12.2003. In the order framing the issues, it has been ordered that, "List of documents and Witnesses in two weeks. Trial by 05.11.2002. As required under Order VIII Rule 1A(3) C.P.C. copy of the impugned letter was not filed along with the*



*additional written statement. Either after framing of the issues or additional issues, the impugned letter/Will dated 09.03.1992 was not produced in the Court. The application has been filed under Section 151 C.P.C. invoking the inherent powers of the Court to reopen the case and thereby to examine the attestor of the Will and also marking of the Will. Since the document has not been produced earlier as required under Order VIII Rule 1A(3) C.P.C. the question of examining the witness to prove the document and receiving the document does not arise. Rule 1 of Order XIII, as it stood prior to its amendment, allowed production of document, which has not already been filed in Court. Now, after the C.P.C. Amendment Act, 1999, under the new Rule 14(3) of Order VII and Rule 1A(3) of Order VIII documents not filed along with the plaint (or) written statement cannot be received in evidence at the hearing of the suit."*

III. The Hon'ble Apex Court in its judgment reported in **2013 SCC Online Mad. 533**, in the case of **Sri Chokkanathaswami and Venkatesaperumal Devasthanam, C.N.Palayam, Cuddalore by its Managing Trust Balasubramaniam vs. Thiagarajan and others**, has held as follows:-



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*"13. Admittedly, the petitioner/plaintiff has filed I.A.No.1112 of 2010 under Order 7 Rule 14(3) of Civil Procedure Code). When a Court of law deals with an application/petition under Order 7 Rule 14(3) of C.P.C., the concerned Court, by exercising its judicial discretion, can condone the delay in filing the documents in question at earlier point of time by the petitioner in a given case. Even with the leave of the Court, the concerned documents can be permitted to be received as per Order 7 Rule 14(3) of C.P.C. In fact, the omission under Order 18 Rule 17 A of CPC will have little significance. Even the non-filing of the documents and not producing the same at the time of filing of the suit/plaint is not ordinarily fatal and also not liable for rejection of the plaint. But, when the Court of law allows I.A.No.1112 of 2010 filed by the petitioner under Order 7 Rule 14(3) of CPC, it has taken into account the important fact that whether the documents in issue sought to be projected and to be marked the petitioner/Devasthanam has a probative value*



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*in the eye of law. In the instant case on hand, the petitioner/plaintiff has produced two documents in issue, which according to the respondents/defendants are totally unconnected with the subject matter of the suit.*

*14. Be that as it may, on a careful consideration of the respective contentions, even though the court of law has a judicial discretion in permitting a litigant/party to allow the application/petition filed under Order 7 Rule 14 (3) of C.P.C., wherein a prayer was made to condone the delay in filing the document and receiving the same etc., in the present case on hand, the petitioner has not made out a good cause/sufficient cause in regard to the filing of the documents in question at later point of time and in any event, the petitioner has not made a prima facie case to allow I.A.No.1112 of 2010 in O.S.No.385 of 2009. Viewed from that angle, I.A.No.1112 of 2010 filed by the petitioner/plaintiff before the trial court is devoid of merits. Consequently, the Civil Revision Petition*



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*fails."*

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3. By way of reply, the learned counsel for 1<sup>st</sup> respondent/plaintiff submitted that at the time of filing the suit, the plaintiff is the owner of property and sought for declaration against the defendants to declare the sale deed forgedly created by the defendants, but, not mentioning the suit in O.S.No. 80 of 2004 for the reason that at that time, Second appeal is pending and it was disposed of subsequently, thereby, final adjudication was ordered. Accordingly, the title of plaintiff is perfected. Hence, after the disposal of second appeal, the plaintiff taken effective steps to produce the judgment copy of Original Suit in O.S.No. 80 of 2004 as necessary document to prove his claim over the property and the same was rightly appreciated by the trial judge. Accordingly, he prayed to dismiss this Civil Revision Petition.

4. Heard and considered rival submissions made by learned counsel for petitioner as well as respondents and perused the records.



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5. On considering both side submissions and on perusal of records, it reveals that in the year 2015, the plaintiff filed a suit in O.S.No. 4918 of 2015 for the relief of declaration and other consequential relief against the defendants 1 and 2 and both the defendants have filed their written statement. When the suit was posted for P.W.1 examination, the plaintiff filed the application in I.A.No. 3345 of 2018 to receive additional document, which is a judgment and decree copy of the suit in O.S.No. 80 of 2004. That application was strongly objected by the 1<sup>st</sup> defendant stating that no pleading with regard to the said proceedings mentioned in the averment of the plaint and there is no averment in the plaint with regard to earlier suit proceedings in O.S.No. 80 of 2004, without which, the document cannot be permitted to mark in the suit.

6. On coming to the facts of the present case, at the time of filing the suit, in the year 2015, earlier suit proceedings in O.S.No.80 of 2004 connected with the Second Appeal No. 620 of 2007 was pending, but the same was disposed of on 22.04.2021. Moreover, on seeing the averment of written statement, the defendants also submitted that the plaintiff's title is



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under adjudication in the said Second Appeal in S.A. No.620 of 2007. So, the defendants also very much aware of the said proceedings. Hence, on considering the written statement avement, after disposal of Second Appeal, the plaintiff taken steps to produce the judgment and decree copy of suit in O.S.No. 80 of 2004. So, the reasons assigned by the plaintiff to receive the document as such is maintainable in law. But, however, as pointed out by the revision petitioners, there is no averment about the said proceedings in the plaint, but on seeing the entire pleadings of the plaint, the plaintiff approached the court contending that the defendants 1 and 2 fabricated, and forgedly created a document, which needs detailed investigation. Admittedly, already the criminal proceedings are pending against defendants with regard to manipulation of document. Hence, plaintiff is to be given opportunity to prove his title over the property. Moreover, the document, which is sought to be marked is the judgment and decree copy of suit in O.S.No.80 of 2004 and it is a document relied on by the plaintiff to prove his title. Accordingly, on considering the facts of the case, the trial court rightly permitted to mark the document on the side of plaintiff, as such, is maintainable in law. The authorities relied on by the Revision



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Petitioners are not applicable to the facts of the case as discussed above.

Accordingly, this Civil Revision Petition is dismissed. However, the plaintiff is directed to make necessary amendment in the plaint and proceed with the trial. On considering the fact that the suit is pending from the year 2015 and also considering the nature of relief claimed in the suit, the trial court is directed to dispose the case by giving opportunity to both sides within a period of eight months from the date of receipt of copy of this order. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

**14.10.2022**

Index : Yes / No  
Internet : Yes / No  
Speaking/Non-speaking order  
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To

XIV Asst. Judge,  
City Civil Court,  
Chennai.

**T.V.THAMILSELVI, J.**

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