



CRP (PD). No.1371 of 2017
and CMP. No.6369 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :07.03.2022

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THE HONOURABLE Mr.JUSTICE C.V.KARTHIKEYAN

CRP (PD). No.1371 of 2017

and

CMP. No.6369 of 2017

Mohammed Hussain Sait

... Petitioner

Vs

1.Zehra Begam
2.H.Mansoorullah Khan
3.Mohammed Shafifullah Khan
4.Haseena Begam
5.Gulnaz Begam
6.Shama Begam
7.S.Rasheeda Khan

...Respondents

Criminal Revision Petition filed under Article 227 of the Constitution of India against Order and Decree in I.A. No.13149 of 2016 in O.S. No.2942 of 2021 dated 20.01.2017 on the file of the IV Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.P.Soundararajan

For Respondents : Mr.B.Manivannan for R1 and R2
R3 & R7 - Vacated
R4 to R6 - Counsel not available



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*CRP (PD). No.1371 of 2017
and CMP. No.6369 of 2017*

ORDER

Sixth defendant in O.S.No.2942 of 2012, now pending on the file of IV Assistant City Civil Court, Chennai, is the revision petitioner herein. The suit has been filed in respect of a property which has been described in the schedule to the plaint as house and building, consisting of Ground +2 floors at Door No.47, Old NO.20/4, Veerabathra Achari Street, Pudupet, Chennai-2. There was an earlier Door Number to it in Door No.49. The owner of that particular property was M.Hafizullah Khan @ Nadirsha.

2. It is stated that, on 07.12.2010, he had executed a Hiba (Gift deed) in favour of his eldest son Mohammed Shafifullah Khan (first defendant). Subsequently, the owner/donor/M.Hafizulla Khan @ Nadirsha died on 14.04.2011. The donee/son/first defendant/Mohammed Shafifullah Khan executed a settlement deed in favour of his wife/fifth defendant on 01.01.2012.

3. Thereafter, the aforementioned fifth defendant sold the property to the present revision petitioner/sixth defendant/Mohammed Hussain Sait by a sale deed dated 16.05.2012. While conveying the title deeds of property, the Hiba (Gift deed) was also handed over to the purchaser/sixth



*CRP (PD). No.1371 of 2017
and CMP. No.6369 of 2017*

WEB CAM defendant/Mohammed Hussain Sait/Revision petitioner.

4. Coincidentally, on the very same day of the sale i.e., 16.05.2012, the widow of the donor M.Hafizullah Khan @ Nadirsha and another son joined as plaintiffs and instituted the suit in O.S.No.2942 of 2012, now pending on the file of IV Assistant City Civil Court, Chennai, with respect to the very same property, claiming partition and separate possession and for declaration that the settlement deed executed by the first defendant/donee in favour of the fifth defendant/his own wife, is null and void. A further relief of injunction to protect the property from being dealt with was also sought.

5. During the pendency of the suit, the plaintiffs issued a notice to produce document taking advantage of Order XI Rule 16 CPC to produce a copy of the Hiba. This notice was issued to the first defendant. He did not have the Hiba. He had already settled the property in favour of the fifth defendant, who had sold the property to sixth defendant and who admittedly was in possession of the Hiba. Naturally therefore, the first defendant did not answer the said notice to produce document.

6. Consequent to that, as set out in Order XI Rule 15 CPC such document cannot be later adduced as evidence. Yet another consequence is



*CRP (PD). No.1371 of 2017
and CMP. No.6369 of 2017*

WEB CDPM

that an adverse inference can be drawn under Section 114 (g) of the Indian Evidence Act, 1872 that the document was not produced only because it was adverse to the party who had been called upon to produce the document. The Court can always draw such adverse inference.

7. The trial in the suit has commenced and the plaintiff was examined as a witness and has been examined in chief and also cross-examined. The other defendants did not enter the witness box.

8. Sixth defendant/revision petitioner, who had purchased the property, then filed an application under Order XIV Rule 3 of CPC to produce documents and among those documents was this particular document namely Hiba dated 07.12.2010 which was in possession of the sixth defendant, owing having been handed over to him at the time when the sale deed was executed.

9. The learned Trial Judge however did not permit production of the said document placing reliance on Order XI Rule 15 CPC.

10. It should be mentioned that the notice to produce the document under Order XI Rule 16 CPC has been issued only to the first defendant, who was not in possession of the document. Thereafter, the sixth defendant,



CRP (PD). No.1371 of 2017
and CMP. No.6369 of 2017

WEB C having been in possession of the document, was not issued with similar notice under Order XI Rule 16 of CPC. Even as per Order XI Rule 16 CPC, the provision itself gives a small window where the documents sought to be produced and not produced, can still be later produced.

11. Order XI Rules 15 and 16 of CPC are extracted as follows for ready reference:

“15. Inspection of documents referred to in pleadings or affidavits.-

Every party to a suit shall be entitled [at or before the settlement of issue] at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document [or who has entered any document in any list annexed to his pleadings] or produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.

16. Notice to produce.-*Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No.7 in*

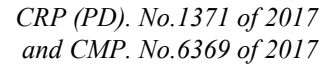


CRP (PD). No.1371 of 2017
and CMP. No.6369 of 2017

WEB COPY *Appendix C, with such variations as circumstances may require.”*

12. A careful perusal of Order XI Rule 15 CPC shows that if party to the suit to whom such notice has been issued, does not produce the document, he/she shall not thereafter put such document in evidence, but an exception had been given that if, he, as a defendant, had a cause which can be deemed sufficient, then the Court, in its discretion, can permit such document to be included or introduced.

13. In the instant case, notice to produce document was not at all issued to the revision petitioner/sixth defendant. Therefore, Order XI Rule 15 of CPC will never apply to the present revision petitioner at all. Even as a successor in title of the first defendant which in fact, is not correct, as he is successor in title of the fifth defendant, he can always urge upon the Court that since notice was not issued, there was no occasion for him to produce the Hiba as a document. Further, the fact that he was handed over the said document at the time of execution of sale deed by the fifth defendant, is more than sufficient cause for him to state that the document should be produced as an evidence during the course of trial and it will not be hit under Order XI Rule 15 CPC or even under Rule 16 CPC. Reasoning of the learned trial



14. Insofar as this particular suit is concerned, the very right of the donor M. Hafizullah Khan @ Nadirsha, to execute the Hiba, will be one issue. Circumstances surrounding execution of the Hiba will also have to be examined to determine whether such Hiba had been executed in manner known to law. These are the surrounding circumstances which the learned trial Judge should examine before deciding as whether the settlement deed by the first defendant in favour of the fifth defendant, should be interfered with or not.

15. Let me not make any further observation and leave discussion to the wisdom and privilege of the learned Trial Judge, to decide the issues during the course of trial.

16. This Civil Revision Petition is allowed. The order in I.A.No.13419 of 2016 is set aside to the limited extent of not permitting to mark the said Hiba dated 07.12.2010 alone, and such document is now permitted to be taken on record. Naturally, it has to be proved in manner known to law. Let the parties graze the witness box and speak about the



*CRP (PD). No.1371 of 2017
and CMP. No.6369 of 2017*

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document to the extent of their knowledge. I am confident that the learned Trial Judge will bestow his attention to ensure that the trial is completed within a reasonable time. No costs. Consequently, connected miscellaneous petition is closed.

07.03.2022

Index: Yes/no
Speaking Order: Yes
ab/kmi

To
The IV Assistant Judge,
City Civil Court,
Chennai.



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*CRP (PD). No.1371 of 2017
and CMP. No.6369 of 2017*

C.V.KARTHIKEYAN,J.

ab/kmi

C.R.P(PD). No.1371 of 2017
and C.M.P. No.6369 of 2017

07.03.2022