



C.R.P. No. 1634 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 1634 of 2017

and

C.M.P. No. 7716 of 2017

A.Manoharan @ Doss (died

2. Vanitha Mani,
W/o. Late A.Manoharan @ Doss

3. M.Kumar,
S/o. Late A.Manoharan @ Doss

4. Suganthi,
D/o. Late A.Manoharan @ Doss

5. Vasanthi,
D/o. Late A.Manoharan @ Doss

6. N.Mythili,
D/o. Late A.Manoharan @ Doss

(Petitioners 2 to 6 brought on record as LR's
of deceased sole petitioner viz., A.Manoharan
vide court order dated 10.03.2021 made in
C.M.P.Nos. 549 and 668 of 2021 in C.R.P.
No.1634 of 2017)

... Petitioners

Versus



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S.Babu (died)

2. B.Revathy,
W/o. Late Babu

3. B.Sajun (minor)
S/o. Late Babu
rep. by his mother and natural
guardian Mrs. B.Revathy

4. B.Prajin (minor)
S/o. Late Babu
rep. by his mother and natural
guardian Mrs. B.Revathy

(Respondents 2 to 4 brought on record as
LRs of deceased sole respondent viz.,
S.Babu vide court order dated 30.03.2022
made in C.M.P. No. 557 and 662 of 2021
in C.R.P. No. 1634 of 2017)

... Respondents

PRAYER : Civil Revision Petition filed under Art.227 of Constitution of India, praying to set aside the fair and decreetal order dated 04.04.2017 passed in I.A.No.384 of 2017 in O.S.No. 44 of 2003 on the file of learned District Munsif, Thiruvottiyur.

For Petitioners : Mr.P.C.Harikumar and Asso.

For Respondents : R1 – died
R2 to R4 - unclaimed



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ORDER

The Revision Petitioner is the plaintiff in the suit in O.S.No. 44 of 2003 on the file of learned District Munsif, Thiruvottiyur, for the relief of declaration and injunction against the defendant in respect of suit property as mentioned in the plaint.

2. The defendant contested the suit. Issues were framed and when the trial was begin, the defendant attempted to mark 23 documents on his side, in which, Ex.B1 and B23 documents alone were objected by the plaintiff to mark through D.W.1, because he is not a right person through whom documents are to be marked on the side of defendant. The defendant produced the document, which is the information obtained through Right to Information Act from the authorities with regard to patta in respect of suit property. But, the plaintiff objected to mark the said information through D.W.1 for the reason that he is not aware about the information, and only through a person, who know about the patta proceedings, the document is to be marked. On hearing submissions of both sides, the trial court not



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permitted the defendant to mark the information received through R.T.I. Act through D.W.1. Thereafter, when the concerned Presiding Officer was transferred and a new Presiding Officer was appointed, D.W.1 was again recalled and he was examined and the document, which was already not permitted by the trial court was marked as Ex.B23 in the absence of plaintiff's counsel. Immediately, the plaintiff filed an application in I.A.No.384 of 2007 under Order 8 Rule 3 of C.P.C. to reject or impound Ex.B23 as irrelevant and inadmissible, which was marked through D.W.1.

3. Furthermore, before marking the said document, already the defendant filed an application to issue Subpoena in I.A. No. 1224 of 2016 under Rule 75 of Civil Rules of Practice in order to mark the information provided under R.T.I.Act with regard to the proceedings dated 09.11.2012 of the Tahsildar, Madhavaram. The said application was objected by the plaintiff stating that the proceedings concerned with the patta is related to Tahsildar, Ambattur and that application is still pending. When the said proceedings is pending, without disposing the said application, the defendant clandestinely marked the said document as Ex.B23. However, the



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learned trial judge dismissed the application in I.A.No.384 of 2017 stating that to drag on the proceedings, the plaintiff filed that application.

4. Even assuming that the plaintiff not raised objection at the time of marking Ex.B23, but on seeing the facts, it reveals that already the defendant filed an application in I.A.No.1224 of 2016 to issue Subpoena to Tahsildar, Madhavaram to mark R.T.I. proceedings. But, suppressing the pendency of the said application, he marked the same document through D.W.1 is not acceptable one. Therefore, the person, who is having the custody of document is a right person to speak about the validity of the document either by Tahsildar, Madhavaram or by the Tahsildar, Ambattur. Hence, Ex.B23 was marked through D.W.1, as such is not permissible under law. Therefore, this Court is inclined to direct the trial court to withdraw the Ex.B23 from the file of the court and mark the same through anyone of Tahilsdar after disposing the application filed in I.A.No.1224 of 2016 on merits. Thereafter, the trial court is directed to proceed to mark the document through the concerned revenue officials.



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5. In the result, this Civil Revision Petition is allowed and the order passed by the trial court in I.A.No.384 of 2017 is set aside. At this juncture, it is stated that now the case is transferred from District Munsif Court, Thiruvotriyur to learned District Munsif cum Judicial Magistrate Court, Madhavaram. Hence, the learned District Munsif cum Judicial Magistrate, Madhavaram is directed to proceed with the trial and to dispose the same within a period of six months from the date of receipt of copy of this order, since the suit is pending from the year of 2003. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

11.10.2022

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
rpp

To

1. District Munsif,
Thiruvottiur,
2. District Munsif cum Judicial Magistrate,
Madhavaram.

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T.V.THAMILSELVI, J.

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