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C.R.P(PD)No.2339 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P(PD).No.2339 of 2017

and

CMP.No.10981 of 2017

1.Chandra

2.Rajendran

3.Venkat @ Venkatesan

4.Kesavan

..Petitioners

Vs.

1.V.Venugopal @ V.Chandrasekaran

2.Gnanasoundari

3.Shenbagavalli

4.Lokeswari

5.Saratha

6.Datchayani

7.Thilagavathy

8.Dhanveer Hussain

9.Shabina Hussain

..Respondents

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Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the judgment and decreetal order in I.A.No.1258 of 2016 in O.S.No.149 of 2012 on the file of the District Munsif, Tambaram dated 02.03.2017.

For Petitioners : Mr.Avinash Wadhwani
for Mr.V.Raghavachari

For Respondents : No Appearance (Names printed in
cause list)

ORDER

Heard the learned counsel for the petitioners. Notice had been directed to the respondents, who are defendants in O.S.No.149 of 2012. Though notice to R1 to R9 issued through Court has been served on 31.07.2017, there is no appearance for the respondents. Their names have also been printed in the cause list. This would not be a deterrent to pass any orders in this Civil Revision Petition.

2.The plaintiffs in O.S.No.149 of 2012, who are the petitioners had filed the suit on the basis of assignment pattas granted with respect to Gramanatham lands to one Dhananjayan, whose legal representatives are



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the plaintiffs herein. The properties, for which such assignment pattas have been granted is situated in Survey No.58/2A, now Gramanatham Survey No.58 and measures 0.03 Cents. There is also a house built in the said land. There is also yet another property in Gramanatham Survey No.58/2 for which, Patta had been granted in Patta No.432. Both the properties are situated at Sembakkam Village, Tambaram Taluk in Kanchipuram District.

3.It is stated by the learned counsel for the petitioners / plaintiffs that though the suit was originally instituted for permanent injunction restraining the defendant from interfering with their peaceful possession, subsequently, an amendment had been made to convert the suit to one for declaration also.

4.The defendant, who had raised an issue with respect to assignment Pattas granted to the plaintiffs had claimed that Patta had also been granted to him for the same Gramantham lands.



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5.These issues are to be decided in the course of the trial in the
suit.

6.Trial had commenced. During the course of the trial, the plaintiffs produced as documents. Exs.A39 to A41, which documents refer to two separate assignment pattas in the name of the defendant. The petitioners were able to obtain xerox copies of those two assignment pattas, which were in the name of the defendant. They wanted to mark the xerox copies. Though notice has been issued under Order 11 Rule 16 of C.P.C., to the defendant to produce the originals of the two documents, which they wanted to mark as Exs.A42 and A43, they were not permitted to do so. The application in I.A.No.1258 of 2016 had been filed by the plaintiffs seeking permission to mark the xerox copies but the learned District Munsif, dismissed the said application, necessitating filing of the present revision petition.

7.The learned counsel for the petitioners took the Court through the aforementioned facts and stated under Order 11 Rule 16 of C.P.C., there



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is a right of a party, either plaintiff or the defendant to call upon the opposite side to produce documents in their possession.

8.In the order under challenge in the revision, the District Munsif, Tambaram had referred to Rule 75(3) of the Civil Rules of Practice and found fault with the petitioners for not having approached the competent authority probably, the jurisdictional Tahsildhar to obtain certified copies of the two assignment pattas in the name of the defendant / respondent and therefore, stated that production of xerox copies or issuance of notice under Order 11 Rule 16 of C.P.C., would not suffice to strengthen the case of the petitioners and rejected the said application.

9.Unfortunately, the learned District Munsif had not taken into consideration illustration (g) to Section 114 of the Indian Evidence Act, 1872 where if notice is issued to produce a particular document in the possession of the opposite party and if such document is not produced, an adverse inference can be drawn by the Court that the documents have not been produced only because they were adverse to the interest of the party,



who was in possession of such document. That particular finding should have been given by the District Munsif and he should have proceeded to draw such adverse inference against the respondent / defendant. That has not been done.

10.To that extent, I would find fault with the order passed.

11.Giving an advise to the petitioners /plaintiffs to take recourse to Section 75(3), does not lie on the District Munsif, who should have exercised the principles asserted in the statute since the defendant had not produced the documents, and drawn adverse inference against the defendant for not producing the documents. That should have been the order which should have been passed.

12.I would direct the Principal District Munsif to draw such adverse inference if the defendant does not prodce the two assignment pattas. If the defendant does not produce the documents, I would give liberty to the revision petitioners / plaintiff to lead further evidence after



conclusion of the evidence of the defendant, by recalling the witness of the plaintiff to mark the two xerox copies, since they are documents the defendant had failed to produce. Therefore, a right had accrued to the petitioners / plaintiffs to mark copies, which are secondary in nature, and the Court should take judicial notice of those documents and also judicial notice of the of the fact that the defendant not produced the originals.

13. The plaintiff is entitled to let in oral evidence with respect to the two assignment pattas and if required, they must be permitted to mark xerox copies. Let an opportunity be granted to the defendant to mark the originals. If he does not, the District Munsif, Tambaram must draw adverse inference against the defendant for not producing the originals and thereafter, the plaintiffs may recall the witness to the plaintiffs and mark secondary documents with respect to such assignment pattas.

14. With the above observations, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.



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15. Since the suit is of the year 2012, the learned District Munsif, Tambaram is directed to dispose of the suit on or before 31.03.2023.

02.03.2022

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Index: Yes/No

Internet: Yes/No

Speaking/Non-speaking order



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To-

The District Munsif Court,
Tambaram.



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C.V.KARTHIKEYAN, J.

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