



CRP(PD)(MD)No.1661 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 16.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.1661 of 2022 and
CMP(MD) No.7256 of 2022

S.Segu Jalaludeen

... Petitioner

Vs

1.Thagakhan
2.Mohammed Raisudeen
3.Seeni Mustaffa
4.Fasheer Ali
5.Syed Ahamed Puhari

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in C.M.A.No.1 of 2022 on the file of the Principal District Court, Ramanathapuram, dated 07.04.2022, which was confirmed in I.A.No.94 of 2020 in O.S.No.22 of 2020, on the file of the Sub Court, Ramanathapuram, dated 12.01.2022 and allow the Civil Revision Petition.

For Petitioner : Mr.C.Vakeeswaran

For Respondents : Mr.J.Barathan



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CRP(PD)(MD)No.1661 of 2022

ORDER

The petitioner is the plaintiff in O.S.No.22 of 2020, which is pending on the file of the Sub Court, Ramanathapuram. He filed the above suit for the relief of permanent injunction. Pending the suit, he has taken out an application in I.A.No. 94 of 2020, under Order 39 Rules 1 & 2 of Civil Procedure Code, for an interim injunction. The said application was dismissed by the trial Court on 12.01.2022, by relying upon certain documents referred by the defendants in Ex.R.3 to Ex.R.6, which, according to the petitioner belong to a third party. As against the fair and decreetal order dated 12.01.2022 in I.A.No. 94 of 2020, the petitioner preferred an appeal before the Principal District Court, Ramanathapuram in CMA No.1 of 2022 and the learned District Judge, by relying upon the same documents, confirmed the order passed by the trial Court. Hence, the petitioner is before this Court with the present Civil Revision Petition.



CRP(PD)(MD)No.1661 of 2022

2.The learned counsel appearing for the petitioner by relying upon the judgment of this Court in the case of ***Rajamani Ammal Vs. Poovayee***, reported in ***(2014) 0 Supreme (Mad) 3284***, submits that the documents relied upon by the trial Court and the Appellate Court are third party's documents and are not belonging to the respondents/ defendants. Therefore, the Courts below have committed an error by deciding the issue based on a third party's document.

3.The learned counsel appearing for the respondents/ defendants submits that though the documents Ex.R.3 to Ex.R.6 produced by them and relied upon by the Courts below are of a third party through those documents, the defendants have established their case that in the suit schedule property, a Dargah is available and hence, the Courts below have rightly rejected the request of the plaintiff for an order of injunction.



CRP(PD)(MD)No.1661 of 2022

WEB COPY

4.This Court considered the rival submissions made and also perused the materials placed on record.

5.The petitioner, as plaintiff, filed the suit in O.S.No.22 of 2020, before the Subordinate Court, Ramanathapuram, for the relief of permanent injunction. Pending the suit, the petitioner also filed an application in I.A.No.94 of 2020, seeking interim injunction. The trial Court dismissed the said application, by relying upon certain documents referred by the defendants in Ex.R.3 to Ex.R.6. Appeal preferred by the petitioner in CMA No.1 of 2022, before the Principal District Court, Ramanathapuram was also dismissed based on the very same documents. It is not in dispute that the documents relied upon by the respondents/defendants are third party documents and does not belong to them. However, based on such documents, the trial Court has come to a *prima facie* conclusion that the plaintiff is not entitled for the relief of interim injunction and the first Appellate Court has also



CRP(PD)(MD)No.1661 of 2022

confirmed the same.

WEB COPY

6. At this juncture, it is relevant to refer the Judgment of this Court, in the case of ***V.A. Amiappa Nainar (Died) and... Vs N. Annamalai Chettiar (Died) and...*** reported in ***AIR 1972 MAD 154***, wherein, it has been held as follows:-

9. Before dealing with the case law on the point, we shall examine the relevant provisions of the Indian Evidence Act, relating to the admissibility of recitals as to boundaries in documents not inter partes. The relevant sections are Sections 11, 13, 32, 155 and 157. We shall first take up Section 11, which deals with facts relevant when a right or custom is in question, one such fact under S.13(a) being any transaction by which the right or custom in question was created, claimed, modified, recognised, asserted or denied. Even giving the widest interpretation to the word 'transaction' we consider it difficult to bring the recitals as to boundaries in documents not inter partes under any



of the verbs "created" "modified" "recognised". "asserted" or "denied". We shall next take up Section 32 which deals with statements written or verbal of facts made by a person who is dead. In order to render a person's statement admissible under Section 32(3), such a statement must be against his pecuniary or proprietary interest. Further what is admissible under Section 32(3) is only the statement and not the document containing the statement. We therefore, consider that the documents in question cannot be brought under Section 32(3). Section 32(7) deals with the statements contained in any deal, will or other document which relates to any such transaction as is mentioned in Section 13(a). In the view that we have taken that such documents are not admissible under Section 13(a), they are not equally admissible under section 32(7). Regarding Section 11 of the Act which also deals with relevancy of facts, there is a distinction between the existence of a fact and a statement as to its existence. See Mt. Naima Khattun v. Basant Singh, AIR 1934 All 406



(FB). The Section makes the existence of facts admissible, and not statement cannot fall under Section 32(3), it cannot equally fall under Section 11. Two other sections which have to be considered in this connection are Ss. 155 and 157. When the executant of the document containing recitals as to boundaries upon which reliance is placed, is himself a witness in the case, the recitals can be put to him under Section 157 as a former statement corroborating the desposition and he can be also confronted with the recitals under Section 155.

13. On a consideration of the aforesaid decisions, we hold that the decision of the Division Bench of this court in 1914 Mad WN 779 = (AIR 1915 Mad 746) is in accordance with preponderance of authorities in various High Courts that recitals as to boundaries in documents not inter partes are inadmissible in evidence under Sections 11, 13(a) 32(3) and 32(7). As pointed out by Wadsworth, J. in AIR 1940 Mad 450, the only method by which recitals in a document not inter



CRP(PD)(MD)No.1661 of 2022

partes could be admitted in evidence is by examinations of the executant of the document are found. In this view we hold that judgment of Ramaswami, J. in AIR 1956 Mad 226 is wrongly decided. The result is that Exs. A. 2. to A. 6 in the present case are inadmissible in evidence.

7.As per section 11(2) of the Indian Evidence Act, facts not otherwise relevant are relevant if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable. Relevancy and admissibility are not the same. All admissible evidence is relevant but all relevant evidence is not admissible. Relevancy is the genus of which admissibility is the species. Though a fact may be relevant as it has connection with the fact in issue, still it may not be admissible. The only method by which recitals in a document not inter partes could be admitted in evidence is by examination of the executant of the document in which such recitals as to boundaries are found.



CRP(PD)(MD)No.1661 of 2022

WEB COPY

8. In view of the above, the order of the Subordinate Court, Ramanathapuram in I.A.No.94 of 2020 in O.S.No.22 of 2020, dated 12.01.2022 and the Judgment of the Principal District Court, Ramanathapuram in C.M.A.No.1 of 2022, dated 07.04.2022 are hereby set aside. In the meantime, since the plaintiff has not substantially established his entitlement for the relief of interim injunction, he has to establish the same before the trial Court. Therefore, the matter is remitted back to the Subordinate Court, Ramanathapuram for fresh consideration. The learned Subordinate Judge, Ramanathapuram shall decide the issue on his own merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order and uninfluenced by the earlier orders passed in I.A.No.94 of 2020 in O.S.No.22 of 2020 and in CMA No.1 of 2022.



CRP(PD)(MD)No.1661 of 2022

WEB COPY

9. With the above directions, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

16.08.2022

Index : Yes / No.

Internet : Yes / No.

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To

1. The Principal District Court, Ramanathapuram.
2. The Sub Court, Ramanathapuram.



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CRP(PD)(MD)No.1661 of 2022

B.PUGALENDHI, J.

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Order made in
CRP(PD)(MD)No.1661 of 2022

16.08.2022