



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON:22.04.2022

DELIVERED ON:07.06.2022

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P. (MD) .No.1651 of 2017

and CMP(MD) .No.9233 of 2017

WEB COPY

T.Perumalsamy

...Petitioner/Petitioner
/Plaintiff

Vs

1.Padmavathi

2.Seenivasagan

3.Venkidasamy

....Respondent/Respondents
/Defendants

PRAYER: Civil Revision Case is filed under Article 227 of Constitution of India, against the fair and final order dated 07.08.2017 made in I.A.No.687 of 2017 in O.S.No.182 of 2015 on the file of the District Munsif Court, Virudhunagar.

For Petitioner : Mr.P.Santhoshkumar

For Respondents : Mr.S.Parthasarathy

O R D E R

The plaintiff is the revision petitioner.

2. The plaintiff had filed a suit for declaration of title and permanent injunction for two items of the suit schedule properties. Pending suit, the plaintiff had filed a list of witnesses as contemplated under Order 16 Rule 1 of C.P.C to be examined on his side.

3.The defendants filed I.A.No.535 of 2017 to reject the said list filed by the plaintiff on the ground that the proposed witnesses are no way connected with the dispute raised in the suit. After hearing both parties, the trial Judge allowed the said application on the ground that the plaintiff has not assigned any proper reason for examining each one of the witnesses. However, the plaintiff was granted liberty to file a fresh application explaining the reason for examination of each one the witnesses.

4.Pursuant to the said order, plaintiff filed I.A.No.687 of 2017 explaining certain reasons for examination of around 9 witnesses. The said application was resisted by the defendants on the ground that the proposed witnesses are in no way connected with

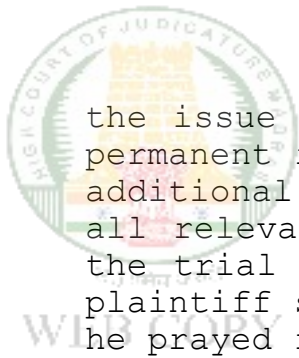


the suit or dispute that has arisen between the parties. The learned trial Judge after detailed consideration of the contentions of either side dismissed the application by the plaintiff. As against the same, the plaintiff has filed the present revision petition.

5.The learned counsel for the petitioner/plaintiff has contended that in view of the order passed in I.A.No.535 of 2017, the plaintiff had filed a fresh application in I.A.No.687 of 2017 in which a detail explanation has been offered by the plaintiff for examination of 9 witnesses on his side. The learned counsel further contended that the learned trial Judge has passed the order in the present I.A.No.687 of 2017 which is quite contrary to the order passed in I.A.No.535 of 2017. He further contended that the list of witnesses originally presented by the plaintiff was rejected by the trial Court on the ground that the proper reasons have not been assigned by the plaintiff for examination of the said witnesses. However, in the present application, reason/explanation has been offered by the plaintiff for examination of each one of the witnesses. The learned counsel further contended that the plaintiff alone can decide who should be examined as a witness on his side to prove his case. If any right is granted to the defendants to restrict or challenge the list of witnesses provided by the plaintiff, that would defeat the rights of the plaintiff. He further contended that in a suit for declaration of title and permanent injunction, the entire burden is upon the plaintiff and hence, the plaintiff has full liberty to examine all the proposed witnesses on his side, for which, the list was placed before the Court. He further contended that on every occasion, the defendants are attempting to restrict the witnesses who are going to depose on behalf of the plaintiff, in order to weaken the case of the plaintiff. He further contended that the additional witnesses will not put to any inconvenience or prejudice to any party. He further contended that the trial Court had erred in judging in relevancy of the witnesses even before they depose before the Court. Hence, he prayed for allowing the civil revision petition.

6.Per contra, the learned counsel for the respondents had contended that the reasons/explanations offered by the plaintiff for examining the additional witnesses will clearly show that the said witnesses have no connection whatsoever with the present dispute in the suit. He further contended that the plaintiff is attempting to threaten the counsels who are appearing on the other side. He further contended that the proposed 8th witness namely Santhakumar is the husband of the Advocate who is appearing for the defendants and has nothing to do with the suit property. Hence, the plaintiff is attempting to threaten the Advocates who are appearing on the opposite side.

7.The learned counsel for the respondents had further contended that the other proposed witnesses are said to have some criminal proceedings which is irrelevant to decide



the issue arising in the present suit for declaration of title and permanent injunction. He further contended that the oral evidence of additional witnesses namely 7 to 9 who are the officials are not at all relevant to decide the civil dispute. Hence, he contended that the trial Judge has rightly dismissed the application filed by the plaintiff seeking permission to submit the list of witnesses. Hence, he prayed for dismissal of the revision petition.

8.I have considered the submissions made on either side.

9.The averments in the plaint and the written statement which are necessary for disposal of the present revision petition are extracted as follows:

9(i).The plaintiff has contended that the suit schedule properties are the ancestral properties of his grandfather Azhagarsamy Naicker. He died leaving behind his wife Lakshmiammal, two sons namely Govindarajulu and Anandarajulu and a daughter by name Seeniammal. According to the plaintiff, his mother Seeniammal had filed O.S.No.18 of 1987 for partition as against her brothers. Pending suit, the matter was compromised between the parties and an oral partition has taken place due to intervention of the mediators. In the said oral partition, the suit schedule properties were allotted to the share of his mother Seeniammal. In view of the said settlement, his mother Seeniammal has withdrawn the suit with liberty to file a fresh suit on the same cause of action.

9(ii).The plaintiff has further contended that his mother Seeniammal has executed a Will on 29.01.2007 in his favour bequeathing both the suit schedule properties. The said Senniammal had passed away on 14.05.2009 and the Will has come into effect. Hence, the plaintiff is the absolute owner of the suit schedule properties.

9(iii).The defendants had filed a written statement admitting the relationship between the parties. However, the defendants claimed that the plaintiff's mother had withdrawn O.S.No.18 of 1987 after understanding the fact that she may not be entitled to a share in the suit schedule property. The defendants have disputed the possession of the plaintiff. The defendants have also disputed the Will dated 29.01.2007 and have contended that the said Will is a forged one.

9(iv).The defendants have further contended that the suit first item was allotted to the share of Anandarajulu who had sold it to the third defendant. The second item was jointly allotted to the share of Govindarajulu and Anandarajulu. Thereafter, it was partitioned between them and the second item was allotted to the share of Govindarajulu who is the father of the second defendant. Hence, the defendants prayed for dismissal of the suit.



10.The pleadings narrated above, will clearly indicate the scope of the suit that required to be adjudicated between the parties. In the light of the said fact, let us analyse the merits of the list of witnesses sought to be examined by the plaintiff as contended by him in I.A.No.687 of 2017. In the affidavit, the plaintiff had contended that the additional witnesses 3, 4, 5 and 7 have to be examined his side because they have deposed in a connected criminal proceedings. The plaintiff had further contended that the 6th witness has to be examined on the ground that she is connected with O.S.Nos.267 of 2009 and 154 of 2009. The plaintiff further contended that 8th witness is connected with O.S.No.154 of 2009 and O.S.No.78 of 2002 and hence, he should be examined. The plaintiff had further contended that 9th witness is the Inspector of Police, Aruppukkottai, 10th witness is the Assistant Engineer of Tamil Nadu Electricity Board and the 11th witness is the Commissioner of Arupukkottai Municipality.

11.The defendants have filed a counter contending that the criminal proceedings have nothing to do with the present civil suit. That apart, three civil suits that are referred by the plaintiff has no connection with the present suit for declaration of title. The defendants have taken strong objection for the examination of one Santhakumar who is the husband of the Advocate who is appearing for the defendants. The defendants have also objected for examination of officials from the Electricity Department, Police Department and Municipality on the ground that they are not relevant for the disposal of the present suit.

12.There is no reference in the plaint whatsoever about any criminal proceedings which is said to be connected with the present suit. There is also no reference in the plaint about three civil suits which are referred to by the plaintiff in the affidavit filed in support of I.A.No. 687 of 2017. That apart, for proving the title or possession of the plaintiff, examination of the statutory authorities is not at all required.

13.The 8th witness is the husband of the Advocate who is appearing on behalf of the defendants. It is clear from the averments made in I.A.No.687 of 2017 that the plaintiff is trying to threaten the Advocate who is appearing on the other side by calling her husband as one of the witnesses on the side of the plaintiff.

14.The pleadings in the plaint and the written statement extracted above will clearly indicate that the plaintiff has to prove the alleged oral partition pending O.S.No.18 of 1987 and the allotment of the suit schedule properties in favour of his mother in the said oral partition. The plaintiff is also duty bound to prove the Will alleged to have been executed by his mother on 29.01.2007 and for proving the above said facts, the examination of the



irrelevant.

15. Section 5 of the Indian Evidence Act is extracted below:

"5. Evidence may be given of facts in issue and relevant facts.—Evidence may be given in any suit or proceedings of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others."

16. A party to a proceeding shall be entitled to let in evidence only with regard to the facts in issue and the relevant fact. The above narrated facts will clearly indicate that the reasons assigned by the plaintiff in I.A.No.687 of 2017 are neither facts in issue nor relevant facts.

17. Section 136 of the Indian Evidence Act is extracted below:

136. Judge to decide as to admissibility of evidence.—When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

18. A perusal of the above said provision namely Section 136 of Indian Evidence Act will clearly indicate that a Judge is entitled to decide as to the admissibility of evidence. The trial Judge is empowered to decide whether the proposed evidence is relevant or not. The judge would be entitled to decide admissibility only if he thinks that the fact, if proved, would be relevant and not otherwise.

19. In the present case, after going through the pleadings in the plaint, written statement, affidavit and the counter affidavit in I.A.No.687 of 2017, the learned trial Judge has passed a detailed order dismissing the application of the plaintiff with regard to the list of witnesses submitted by him after arriving at a finding that all additional witnesses are irrelevant to decide the fact in issue or the relevant fact.



20.The plaintiff is not only attempting to drag on the proceedings, but also attempting to arm-twist and coerce not only the defendants, but also their counsels. The learned trial Judge after going through all the materials on record has rightly arrived at a conclusion that the witnesses listed in I.A.No.687 of 2017 are not admissible in evidence as contemplated under Section 136 of the Indian Evidence Act.

21.In view of the above said discussion, the order passed by the trial Court in I.A.No.687 of 2017 in O.S.No.182 of 2015 on the file of the District Munsif Court, Virudhunagar is confirmed. This Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

msa

To

1.The District Munsif,
Virudhunagar

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai(2 copies)

+1 CC to M/s.S.PARTHASARATHY, Advocate (SR-24928[F] dated
09/06/2022)

order made in
C.R.P. (MD) .No.1651 of 2017
and CMP(MD) .No.9233 of 2017
07.06.2022

vr(CO)

TR(14.06.2022) 6P 5C