



CRP.No. 1750 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

CRP.No. 1750 of 2020

and

CMP.No. 10827 of 2020

R. Kandasamy @
Kandasamy Nadar

.. Petitioner

Versus

1. Kandasubramaniam
2. P. Nallayi

.. Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 17.06.2020 made in I.A.No.2 of 2019 in O.S.No.217 of 2019 on the file of Principal District Munsif Court, Namakkal.

For Petitioner : Mr.I.Abrar Md Abdullah

For Respondents : Mr.B. Gobalakrishnan



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ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 17.06.2020 made in I.A.No.2 of 2019 in O.S.No.217 of 2019 on the file of Principal District Munsif Court, Namakkal.

2. The revision petitioner herein is the second defendant and the respondents herein are the plaintiffs in the original suit.

3. Heard both sides and perused the materials available on record.

4. On a perusal of the records, it is seen that the respondents/plaintiffs filed the suit in O.S.No.61 of 2014 before the Principal District Munsif Court, Namakkal, for declaration and permanent injunction. The defendants have contested the suit by filing written statement and denying all the averments made in the plaint. During the pendency of the suit proceedings, the revision petitioner/2nd defendant has filed I.A.No.2 of 2019 under Order 18 Rule 17 read with



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Section 151 of the Code of Civil Procedure, seeking to recall the PW1 to adduce further evidence. After perusing the records, the Court below dismissed the said application by order dated 17.06.2020. Aggrieved by the said order, the petitioner has filed this Revision.

5. According to the revision petitioner, the Court below erred in dismissing the application for recalling PW1 without looking into the fact that he has to be cross examined based on the documents, which were brought to the knowledge of the petitioner only on 07.11.2019. The Court below ought to have seen that the plaintiff who claims title based on 5 documents, had failed to produce the said documents before the trial Court and it was obtained now by the petitioner and it is very much necessary to cross examine PW1 based on those documents to give an effective adjudication in the suit. But the Court below erred in holding that there is no necessity to examine PW1 based on the said documents and the application for recalling PW1 is filed only to fill up the lacuna in the suit. Hence, the Court below has come to a conclusion that there are no sufficient bona-fide reasons to recall PW1 evidence. Therefore, the revision petitioner seeks for allowing the above Revision.



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6. The case of the respondents/plaintiffs is that the father of the 1st plaintiff and the husband of the 2nd plaintiff and the father of the 3rd defendant, namely, Palani Gounder, has executed a registered Will in favour of the plaintiffs. After his demise, on 24.12.2000, the respondents 1 & 2, the plaintiffs and the wife of the first plaintiff by using a xerox copy of the Will as well as a xerox copy of the patta transfer order issued by the Revenue Authorities, executed a sale deed in favour of one Arumugam dated 01.07.2010. The above said xerox copy of the four documents were given to the petitioner by Chokkalingam on 07.11.2019. The aforesaid four documents relating to the suit property, were given to the petitioner's Advocate. The aforesaid facts have not been stated in the plaint, affidavit filed in chief and in his cross examination by the respondents/plaintiffs and the same were suppressed by the plaintiffs. Therefore, in respect of the aforesaid documents, the petitioner/2nd defendant seeks to recall the PW1 to adduce further evidence.

7. On a further perusal of the documents produced by the revision petitioner herein, it is seen that the respondents/plaintiffs have filed the suit for declaration and permanent injunction in respect of "cart track



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pathway" comprised in Survey Nos. 20/2/101, 20/2/102-A, 20/2/30 said to have been in the suit schedule property. According to the respondents/plaintiffs, after completion of the cross-examination of 1st plaintiff, the petitioner/2nd defendant has suppressed the aforesaid facts and he has filed the aforesaid petition only to fill up the lacuna after three years. Hence, the above Revision has to be dismissed.

8. Taking into consideration the entire facts and circumstances of the case, to reopen the case and to adduce evidence on behalf of PW1 by the parties concerned, an opportunity has to be given to the petitioner/2nd defendant to let in evidence and mark those four documents through PW1. Hence, this Court is inclined to allow the Civil Revision Petition on payment of costs of ***Rs.2,000/- [Rupees Two Thousand Only] each*** to be payable to the respondent's counsel. Further, the Court below is directed to complete the entire process in O.S.No.217 of 2019 on the file of Principal District Munsif Court, Namakkal, preferably, within a period of two months.



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9. Accordingly, the Civil Revision Petition is allowed. No costs.

Consequently, connected Miscellaneous Petition is closed.

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Speaking order : Yes/No
Neutral Citation : Yes/No
Index : Yes/No
msm

To

1. The Principal District Munsif, Namakkal.
2. The Section Officer, V.R.Section, High Court, Madras.



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V.BHAVANI SUBBAROYAN, J.

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