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C.R.P.No.4379 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.R.P.No.4379 of 2022
and
C.M.P.No.23209 of 2022

1.A.Jayapandian

2.A.Veerapandian

3.J.Esther

4.V.Christy

... Petitioners

Vs.

1.A.John Birtto

2.D.Birla David

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order of XV Additional City Civil Court, Chennai, dated 28.09.2022, passed in I.A.No.2 of 2021 in A.S.No.283 of 2018.

For Petitioners : Mr.K.R.B.Dhaaranee

For Respondent : Mr.A.Kumar



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ORDER

This Civil Revision Petition has been filed challenging the order of XV Additional City Civil Court, Chennai, dated 28.09.2022, passed in I.A.No.2 of 2021 in A.S.No.283 of 2018.

2. The revision petitioners are the appellants in the appeal suit in A.S.No.283 of 2018 and they are the plaintiffs in the original suit in O.S.No.2686 of 2009 on the file of V Assistant Judge, City Civil Court, Chennai, which was filed seeking declaration to declare the sale deed as null and void and for injunction. The suit was dismissed and the revision petitioners preferred A.S.No.283 of 2018. It is not in dispute that the appeal suit in A.S.No.283 of 2018 was posted for passing judgment on 12.01.2023 by the XV Additional City Civil Court, Chennai. During the pendency of the appeal suit, the revision petitioners/appellants filed an interlocutory application in I.A.No.2 of 2021 under Order XLI Rule 27 r/w Section 151 of the Code of Civil Procedure to receive additional documents viz., (a) Loan sanction letter from Indian Overseas Bank and (b) letter sent by the Manager of Indian Overseas Bank dated 12.09.2014 and permit the petitioners to mark those documents in the appeal suit. The Appellate Court adjudicated the issues and considered the conditions to be complied with under Order 41 Rule 27 CPC for the purpose of



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accepting additional documents during the pendency of the appeal suit. The Appellate Court found that the two letters/documents sought to be marked are dated 10.08.2008 and 12.09.2014. The suit was instituted by the revision petitioners/appellants in O.S.No.2686 of 2009. The said suit was dismissed on 28.04.2018. Even during the pendency of the original suit, the additional documents sought to be marked through the interlocutory application in the first appeal were within the knowledge of the revision petitioners. The revision petitioners ought to have initiated steps to mark those documents in the original suit or at least at the time of filing of appeal suit in A.S.No.283 of 2018. Instead, the revision petitioners have filed the interlocutory application in the year 2021 when the first appeal was finally posted for arguments and judgment.

3. The Appellate Court considered the interlocutory application with reference to the three conditions, which must be complied with under Order 41 Rule 27 CPC, which are as follows:

- (i) The document ought to be marked must be relevant to the appeal.
- (ii) The document intended to be marked must be unknown or it must be out of the knowledge of the parties.
- (iii) The document intended to be marked cannot be traced or found out even after exercise of due diligence.”



4. The Appellate Court further found that the said documents are not at all relevant to decide the validity of the document dated 04.08.2008. The revision petitioners themselves have stated that the loan was obtained by deposit of title deeds on 15.02.2003. The suit was instituted in the year 2009 itself. Therefore, the said documents were available and within the knowledge of the revision petitioners at the time when the suit was instituted. With reference to the document dated 12.09.2014, it was also within the knowledge of the revision petitioners. Thus, they would have marked those documents at the time of trial in the original suit or at least at the time of filing of appeal before the Appellate Court, but they failed to do so. Thus, the Appellate Court arrived at a conclusion that the revision petitioners have not complied with the mandate provided in Order 41 Rule 27 CPC and consequently, the interlocutory application was dismissed.

5. As rightly observed by the Appellate Court, the revision petitioners have not given any satisfactory reason to show their due diligence for not producing the letters of the years 2008 and 2014. A person, who left over the issue, cannot be allowed to wake up after several years, which would cause prejudice to the interest of other parties. The parties, who are approaching the Court, must file the documents within their knowledge at the time of institution of the original suit or at least during the pendency of the original proceedings.



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6. In the present case, the revision petitioners have filed an appeal suit and even at the time of filing of the appeal suit, they have not filed those documents, which were within their knowledge even at the time of institution of suit. This being the factum established, this Court do not find any acceptable reason to interfere with the order impugned.

In the result, the order dated 28.09.2022 passed in I.A.No.2 of 2021 in A.S.No.283 of 2018 by the XV Additional City Civil Court, Chennai, is confirmed and the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

05.01.2023

Index : Yes
Speaking order
Neutral Citation : Yes
gm

To
The XV Additional City Civil Court,
Chennai.



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S.M.SUBRAMANIAM., J

gm

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