



C.R.P.(MD) No.1206 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.06.2023

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THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(MD) No.1206 of 2023

and

C.M.P. (MD) No.5833 of 2023

Lalitha

... Petitioner

Vs.

1.Sow Balaji

2.Gandhimathi

3.Suriyan

4.Santhakumari

5.Gurunathan

6.Jothi Gurunathan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records and set aside the Docket Order dated 24.02.2023 passed by the Sub Court, Uthamapalayam in I.A.No.71 of 2014 in A.S.No.22 of 2013.

For Petitioner : Mr.K.Chengiz Khan



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ORDER

This Civil Revision Petition has been filed to call for the records and set aside the Docket Order dated 24.02.2023 passed by the Sub Court, Uthamapalayam in I.A.No.71 of 2014 in A.S.No.22 of 2013.

2. The petitioner is the third defendant in O.S.No.276 of 2006 on the file of the District Munsif Court, Uthamapalayam. The said suit was filed by the first respondent herein for a declaration. The said suit was however dismissed by the Trial Court by its Judgment and Decree dated 24.02.2011.

3. Aggrieved by the same, the first respondent preferred an appeal in A.S.No.22 of 2013 before the Sub Court, Uthamapalayam. Thereafter, in A.S.No.22 of 2013, the first respondent filed I.A.No.71 of 2014 under Order XLVII Rule 27 of Code of Civil Procedure, 1908 to receive a Sale Deed dated 10.05.1961 as the appellate side documentary evidence. The said I.A.No.71 of 2014 was allowed by the Sub Court, Uthamapalayam vide impugned order dated 24.02.2023.



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4. The learned counsel for the petitioner submits that in the affidavit filed in support of the above I.A.No.71 of 2014 in A.S.No.22 of 2013, the first respondent has merely referred to Sale Deed dated 10.05.1961, based on which, the first respondent claims the title over the suit schedule property which was not available at the time of filing of the O.S.No.276 of 2006. It is submitted that no proper explanation was given by the respondent and therefore the Sub Court, Uthamapalayam erred in allowing the relief to the respondent for production of additional documents at the appellate stage *vide* impugned order. It is submitted that the impugned order is liable to be interfered with.

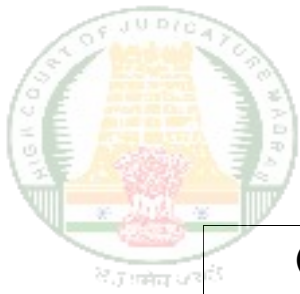
5. It is submitted that the first respondent as well as the petitioner claims title over the property partitioned between the three brothers namely, Purusothamannaaidu, Nambulu Naidu and Rathakrishnan. The first respondent's father purchased the property from the buyers who purchased the property from the Rathakrishnan. The property of the Purusothamannaaidu was purchased by the second and third respondents and the petitioner. The fourth respondent purchased the property from Nambulu Naidu.



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6. The property in question is said to have been purchased by the respondent's father in 1968 from one Ragupathy *vide* Sale Deed dated 11.11.1968 which preceded the earlier Sale Deed dated 07.06.1968 executed in favour of the Ragupathy. It is submitted that without parent document, the said Ragupathy would not have purchased the property in June, 1968 and therefore, the learned Sub Judge, Uthamapalayam committed grave error in allowing I.A. filed for receiving additional documents.

7. I have considered the arguments advanced by the learned counsel for the petitioner. I have perused Order XLI Rule 27 of Code of Civil Procedure, 1908. Sub Rule (1)(a) & (1)(aa) & (1)(b) to Order XLI Rule 27 of Code of Civil Procedure, 1908 reads as under:-



(1)(a) & (1)(aa) to Order XLI Rule 27	(1)(b) to Order XLI Rule 27
27.Production of additional evidence in Appellate Court - (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But, if (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or (aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or (b) the Appellate Court may allow such evidence or document to be produced, or witness to be examined.	27.Production of additional evidence in Appellate Court - (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But, if (a) (aa) (b) The Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

8. On perusing the above provisions, it is clear that the Appellate Court has ample power to allow marking of additional evidence if a person establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of



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due diligence, be produced by him at the time when the decree appealed against was passed.

9. The Appellate Court can also allow any evidences or document to be produced or witness to be examined if the Appellate Court requires such documents to be produced or such witness to be examined to enable it to pronounce the Judgment or for any other substantial cause.

10. A Appeal Suit is continuous of the Original Suit. In this case, the Court has exercised its discretion in favour of the first respondent by allowing I.A. filed for allowing the additional documents. Therefore, the power exercised by the Appellate Court in allowing the I.A. filed by the respondent to mark additional documents does not call for interference. Ultimately, the Courts are required to do justice by pronouncing Judgment and Decree based on evidence and render justice. Therefore, I do not find any scope for interfering with the impugned order. This impugned order does not call for interference.

11. This Civil Revision Petition is therefore liable to be dismissed and is accordingly dismissed. No cost. Consequently, connected



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Miscellaneous Petition is closed.

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NCC : Yes/No
Internet: Yes/No
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C.SARAVANAN, J.

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To
The Sub Court, Uthamapalayam.

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