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C.R.P.Nos.1107 and 1108 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

C.R.P.Nos.1107 and 1108 of 2023

and

CMP.No.7801 of 2023 in CRP.No.1108 of 2023

L.K.Prakash

... Petitioner / Plaintiff
(in both CRPs)

Vs

1.Yasodha Kuppusamy
2.Suresh Kannan
3.Ramesh Babu
4.Jamuna Rani

... Respondents / Defendants
(in both CRPs)

Common Prayer : Civil Revision Petitions filed under Article 227 of the Constitution of India praying to set aside the fair and final order dated 10.01.2023 passed by the learned II Additional District Judge, Salem in I.A.No.2 of 2022 in O.S.No.219 of 2016 and I.A.No.1 of 2022 in O.S.No.219 of 2016 respectively



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For Petitioner : Mr.L.Mouli
(in both CRPs)

For Respondents : Mr.M.S.Veluchamy
(in both CRPs) for Mr.V.Rangarajan [R1 to R4]

COMMON ORDER

These two revisions arise challenging the two separate orders in I.A.No.1 of 2022 and I.A.No.2 of 2022 respectively, which was taken out by the plaintiff in O.S.No.219 of 2016 against the same set of defendants.

2. The suit in O.S.No.219 of 2016 on the file of II Additional District Court, Salem is one for partition and separate possession. The relationship between the parties is not in dispute. The plaintiff is the child of one Kuppusamy, and so are the defendants 2 to 4. The first defendant is the wife of Kuppusamy and the mother of plaintiff and defendants 2 to 4. The revision petitioner is the plaintiff.

3. For the purpose of revision, I am not going to delve deep into the pleadings of the parties. Suffice to say that the plaintiff / revision petitioner



had taken out two application viz., I.A.No.1 of 2022 and I.A.No.2 of 2022.

I.A.No.1 of 2022 was filed under Section 151 of CPC to reopen the evidence on his side for the purpose of examining further witnesses in the suit and I.A.No.2 of 2022 was filed under Order XVI Rule 1 of the Code Civil Procedure to summon the following authorities :

- a) The Airport Director, Chennai International Airport
- b) The Airport Director, Madurai Airport
- c) The Branch Manager, Central Bank of India, Pallavaram Branch
- d) The Joint Commissioner, Income Tax Office, Tambaram
- e) The Tahsildar, Pallavaram Taluk Office

4. The case of the revision petitioner/plaintiff is that his father, the deceased Kuppusamy was running a proprietary firm under the name and style 'Lakshmi Electrical Enterprises'. The said firm was engaged in the business of electrical contract works with the Airport Authority of India, having its office at Madurai and Chennai. The plaintiff would plead that the said Lakshmi Electrical Enterprises was holding an account in Central Bank of India, Pallavaram Branch and the payments that have been made by the Airport Authority of India for the work done, had been credited to the said



account. This apart, the said Kuppusamy had started a construction business under the name and style of 'YESSARPY Enterprises' in which the said Kuppusamy, the plaintiff and defendants 1 to 3 are partners. He would state that this entity also had an account with the said Bank referred to above and was assessed to income tax. The income tax returns were filed before the Tambaram Income Tax office.

5. It is the contention of the plaintiff that his father died intestate leaving behind the plaintiff and the defendants as his legal heirs. According to the plaintiff, he and the defendants had no independent source of income other than the businesses run by his father. After the demise of his father, the plaintiff was treated badly and indifferently by the defendants. Hence, he filed a suit for partition of suit schedule mentioned properties and for separate possession .

6. It is the further plea of the plaintiff that the defendants had obtained a legal heir certificate mentioning the name of the plaintiff as 'PRASAD' instead of 'PRAKASH' as one of the legal heirs of late Kuppusmy. The said certificate was produced by the defendants before the Airport Authority of



India along with other fabricated documents for the collection of the payments that were due from the Airport Authority for the supply made through the firm.

7. The suit was laid on 12.09.2016, to which the defendants had filed their written statement. Thereafter, the plaintiff had filed a memo on 06.12.2019 calling upon the defendants to produce certain documents relating to the partnership firm 'Lakshmi Electrical Enterprises', to which demand, the defendants did not accede to.

8. The defendants filed a counter objection to the said memo stating that Lakshmi Electrical Enterprises was a proprietorship concern of deceased Kuppusamy and that they did not possess any documents. Insofar as YESSARPY Enterprises is concerned, it is a partnership concern which is an entirely different entity and that not being a party to the suit, they are not in a position to produce the documents claimed by the plaintiff.

9. As his attempt to extract the documents from the defendants failed, the plaintiff filed an application in I.A.No.2/2022 under Order XVI Rule 1 of



CPC. The second defendant had filed a counter affidavit which was adopted by other defendants whereunder it was pleaded that the evidence of the plaintiff had already been closed on 26.09.2019 itself and at a belated stage, this application has been filed. He would state that as early as 14.08.2018, the Court had left it open to the parties to take appropriate steps with respect to production of the documents and despite the passage of nearly four years from the date of the order till 02.06.2022, i.e., the date when the matter was listed for plaintiff's side arguments, the plaintiff had not taken any steps. The filing of this petition itself was only to drag on the litigation and to harass the defendants by keeping the suit pending.

10. The learned Judge after receipt of this counter and after hearing the arguments of the plaintiff and defendants, dismissed the application in I.A.No.2/2022 on the ground that the plaintiff has right to procure the documents resorting to the provisions under Right to Information Act. He would further state that the plaintiff having not taken any steps from 2018 to 2022, it comes to light that the only intention of the plaintiff was to prolong the trial and hence the said application was dismissed.



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11. Aggrieved by the same, the present civil revision petitions had arisen at the instance of the plaintiff.

12. I heard Mr.L.Mouli for the revision petitioners and Mr.M.S.Veluchamy for Mr.V.Rangarajan for respondents.

13. I have to agree with Mr.Veluchamy that insofar as the matter relating to YESSARPY Enterprises is concerned, in which the plaintiff claims to be a partner, as a partner of the said firm, it is always open to him to procure the documents and he has the right to peruse the records of partnership firm and produce the same before the Court. However, insofar as Lakshmi Electrical Enterprises is concerned, there is no dispute that it is the proprietorship firm of late Kuppusamy. On the death of Kuppusamy, unless and until there are any documents by way of settlement deed or Will or where the natural course of succession is interfered with, the plaintiff would be entitled to a share. But as to what was the amount that Kuppusamy had earned, would not be within the knowledge of either the plaintiff or the defendants, because it is a proprietorship firm and it is only the deceased Kuppusamy who would have the knowledge of the same. The plaintiff having



presented the suit for partition, the duty falls on him to produce all the records in order to show that his father had left behind certain assets which are capable of division.

14. As discussed above, it is not as if the plaintiff had immediately rushed to the Court under Order XVI Rule 1 of CPC. He had given a notice to the defendants seeking production of documents and the defendants had stated that they are not in possession of the same. Therefore, the only way in which these documents can be brought before the Court is by the way of summoning the appropriate authorities to produce it. In fact, the Court below itself by its order dated 14.08.2018 has given opportunity to the petitioner to summon the same. There is no dispute that there is a delay of four years in filing the petition. But I cannot lose sight of the fact that from March 2020 till May 2022, the entire country was in lockdown due to the effects of Pandemic and the hearings of the Courts were not regular and were sporadic.

15. Taking the overall circumstances into account, I am of the view that the plaintiff has taken steps as early as 2017 and since the Court had given



him opportunity to move an appropriate application in 2018, the delay in filing the application in 2022 can be treated as one caused due to Pandemic.

16. The entire suit is before the trial Court and it would be in the interest of parties that they were given the best available opportunities to produce all available records. If I were to confirm the learned trial Judge, I would be treating the Code of Civil Procedure as a punishing tool rather than Code of fairness, which it is. I informed Mr.L.Mouli that the plaintiff cannot summon the Airport Director, Chennai International Airport; the Airport Director, Madurai Airport; and the Income Tax authorities in order to substantiate his case. The Airport Director is not the person who is dealing with the accounts and I told him that no purpose would be served by summoning the said authorities.

17. Taking note of this fact, Mr.L.Mouli has restricted his claim to summoning the records from the General Manager (Electricals), Airports Authority of India, Chennai International Airport, Chennai-600 027 and General Manager (Electricals), Airports Authority of India, Madurai Airport, Madurai - 625 022. He also confined it to the Branch Manager, Central



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Bank of India, Pallavaram Branch, Chennai - 600 044 with respect to the outstanding amount in the account of M/s.Lakshmi Electrical Enterprises as on 11.03.2006.

18. Therefore, the revision is allowed in so far as summoning the three aforementioned authorities namely, the General Manager (Electricals), Airports Authority of India, Chennai International Airport, Chennai-600 027; the General Manager (Electricals), Airports Authority of India, Madurai Airport, Madurai - 625 022; and the Branch Manager, Central Bank of India, Pallavaram Branch, Chennai - 600 044 and it stands dismissed with respect to summoning (a) the Airport Director, Chennai International Airport, (b) the Airport Director, Madurai Airport, (c) the Joint Commissioner, Income Tax Office, Tambaram and (d) The Tahsildar, Pallavaram Taluk Office.

19. To conclude, the CRP.No.1107 of 2023 is partly allowed in the aforesaid terms and CRP.No.1108 of 2023 is allowed. There shall be no orders as to costs.



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20. Needless to point out that in case the defendants want to let in additional evidence after receipt of the aforesaid records, they shall also be given a reasonable opportunity. The evidence shall be confined to the new evidence that is brought before the Court by the General Manager-Electricals, Airport Chennai International, Chennai-600 027; General Manager-Electricals, Madurai Airport, Madurai; and the Branch Manager, Central Bank of India, Pallavaram Branch, Chennai - 600 044. Consequently, connected miscellaneous petition is closed.

13.06.2024

Index:Yes/No
Speaking order / Non-speaking orders

To:

1.The Judge
II Additional District Court
Salem.

2.The Section Officer,
VR Section, High Court, Chennai.



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V.LAKSHMINARAYANAN,J.

ds

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