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C.R.P.(PD).No.2553 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.2553 of 2024
and C.M.P.No.13375 of 2024

1. Kaliyaperumal
2. Thangamani

.. Petitioners

Versus

1. Latha
2. Pushpalatha

.. Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the impugned order, dated 22.03.2024, made in I.A.No.10 of 2024 in O.S.No.84 of 2012 on the file of the Additional District Munsif Court, Jayankondam and allow this Civil Revision Petition.

For Petitioners : Ms.Chenthoori Pugazhendhi,
for Mr.K.Balu

For Respondents : Mrs.Senthil Vadivu, for R1

: No Appearance for R2



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ORDER

This Civil Revision Petition challenges the order passed by the learned Additional District Munsif at Jayankondam in I.A.No.10 of 2024 in O.S.No.84 of 2012, dated 22.03.2024.

2. The civil revision petitioners are the first and second defendants in the suit. The contesting respondents are the plaintiffs. For the sake of convenience, the parties are referred to as plaintiffs and the defendant Nos.1 and 2.

3. The plaintiffs presented O.S.No.84 of 2012 seeking for a relief of partition and separate possession. It is the case of the first plaintiff that her husband one Ramamoorthy is the son of Kaliyaperumal and the brother of Thangamani. The second plaintiff is said to be the daughter of Ramamoorthy. This aspect on the paternity of Ramamoorthy is denied by the civil revision petitioner. However, I am not entering into that issue as it is irrelevant for the purpose of disposal of this revision. Pleading that the suit properties are the ancestral properties and that Ramamoorthy has a



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share in the same, the plaintiffs came forth with the suit for the aforesaid relief.

4. On being served with the summons, the defendants filed a detailed written statement. According to them, Ramamoorthy was given to evil ways and therefore, it brought disrepute to the members of the family. Therefore, on 30.05.1990, the properties were divided amongst the family members and Ramamoorthy received a sum of Rs.1,00,000/- in full quit of his rights in and over the suit properties. An another plea was raised as regarding the document said to have been executed on 12.10.1987. That too is said to be a partition list. However, despite Ms.Chenthoori Pugazhendhi vehemently contends that the parties pleaded about the said document in the written statement, I could not find even a whisper about the same.

5. When the matter was listed for trial, the defendant Nos.1 and 2 took out an application in I.A.No.10 of 2024 seeking the permission of the Court under Order VIII Rule 1A(3) of the Code of Civil Procedure to permit them to receive the said document. This application was numbered as I.A.No.10 of 2024.



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6. The learned Judge issued notice in the said application and received a counter-affidavit from the plaintiffs. After hearing the arguments of both the sides, he proceeded to dismiss the said petition. Hence, this revision at the instance of the defendant Nos.1 and 2.

7. When the matter came up for admission, I directed Ms.Chenthoori Pugazhendhi to issue notice on the learned Counsel who represents the plaintiffs in the Court below. Notice was also served through the process of Court as well as privately. She informed me that the learned Counsel who represents the plaintiffs in the Court below, Mr.R.Suresh Kumar, had instructed her that he had briefed Mrs.Senthil Vadivu to appear and oppose the revision. The matter was adjourned to hear Mrs.Senthil Vadivu. Mrs.Senthil Vadivu appears today and informs the Court that the plaintiffs informed her that she need not represent them before this Court. Therefore, I heard Ms.Chenthoori Pugazhendhi in the revision.

8. Ms.Chenthoori Pugazhendhi draws my attention to the paragraph No.4 of the written statement filed by the defendants as early as on



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03.10.2012. She urges that the documents that are sought to be adduced under the present application, have been specifically pleaded by her in the said paragraph. Hence, the Court below should have allowed the application. She adds that the position of law is settled by the judgment of a Full Bench of the Andhra Pradesh High Court in ***Chinnappareddigari Pedda Muthyalareddy Vs. Chinnappareddigari Venkatareddy and Ors., AIR 1969 Andhra Pradesh 242***, in particular, paragraph No.34 and by a judgment of the Supreme Court in ***Yellapu Uma Maheswari and Anr. Vs Buddha Jagadheeswararao and Ors., (2015) 16 SCC 787***. She urges that the order passed by the learned Trial Judge requires interference.

9. I have carefully considered the arguments of Ms.Chenthoori Pugazhendhi and have gone through the records.

10. Ms.Chenthoori Pugazhendhi is correct that the defendants have specifically pleaded as regards the document, dated 30.05.1990. However, there is no plea in the written statement regarding the other document, dated 10.10.1987 which the defendants want to exhibit. In the absence of a plea, no amount of evidence, however sterling it may be, can be looked into by



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the Court. That being the situation, I am not in a position to interfere with the order insofar as the rejection of the document, dated 10.10.1987 is concerned.

11. However, with respect to the document, dated 30.05.1990, a specific plea was raised by the defendants as early as in the year 2012. No reply seems to have been filed by the plaintiffs to the said plea. I should hasten to add that a non-filing of a reply statement is not being held against the plaintiffs. I am referring to the said fact only in order to point out that the plaintiffs will not be taken by surprise by filing of the said document during the course of trial. Where a plea exists, the Court must give full opportunity to the party to substantiate the said plea.

12. The Code of Civil Procedure is not a Procrustean bed to punish a party for not having approached the Court in time. It is a legislation of fairness and that requires a uniform flow in the completion of a trial. The litigation having started in the rural areas of Tamil Nadu, I cannot expect a litigant to be as vigilant about the records as would be the case in the case of Metropolitan cities.



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13. The defendants gave instructions to their lawyer and their lawyer also took a plea that Ramamoorthy received a sum of Rs.1,00,000/- as early as on 30.05.1990 and moved away from the family. That being the situation, the provision relating to leave for receipt of records deserves a liberal construction. Order VIII Rule 1A(3) of the Code of Civil Procedure came in by way of an amendment to the Code of Civil Procedure in the year 2022. Prior to the said provision, there was a provision under Order XIII Rule 2 enabling the Court to condone the delay in filing the documents.

14. The Parliament, in its wisdom, removed the provision for condonation of delay and substituted it with a provision to grant leave to receive documents under Order VIII Rule 1A(3). The words that are used by the Parliament is "to grant leave" and not "to condone the delay". When it comes to granting leave, it has always given a more liberal construction than when a Court deals with an application to condone the delay.

15. Now, I turn to the judgments referred to by Ms.Chenthoori Pugazhendhi namely, ***Chinnappareddigari Pedda Muthyalareddy's*** case



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(cited *supra*) and ***Yellapu Uma Maheswari's*** case (cited *supra*). The view taken by a Full Bench of the Andhra Pradesh High Court in ***Chinnappareddigari Pedda Muthyalareddy's*** case (cited *supra*) is that an unregistered partition list cannot be looked into as a source of title. However, the said document can be utilised by the Court in order to point out the severance of the status between the parties. The defendants cannot obviously use the said document, dated 30.05.1990 for the purpose of proving their title to the suit schedule mentioned property. They can certainly rely upon it in order to show that Ramamoorthy had moved away from the joint family. It is pertinent to take note here that the view taken by the Andhra Pradesh High Court referred to above find acceptance at the hands of the Supreme Court in ***Yellapu Uma Maheswari's*** case (cited *supra*) (refer paragraph No.16).

16. Ms.Chenthoori Pugazhendhi has produced a photostat copy of the document, dated 30.05.1990. A perusal of the document shows that it is not an unstamped document, but, bears a stamp on the same. Had it been an unstamped, I would not have entertained the revision since an unstamped document cannot be looked into for any purpose vide Section 35 of the



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Indian Stamp Act, 1899. If it is an unregistered document, though under Section 17 of the Registration Act, 1908, it requires a registration, it can still be used for collateral purpose.

17. In the light of the above discussion, this Civil Revision Petition stands partly allowed. The order passed by the learned Additional District Munsif Court, Jayankondam is set aside. The application to grant leave stands allowed. The defendant Nos.1 and 2 will be entitled to produce the document, dated 30.05.1990 alone. The revision, insofar as the document, dated 10.10.1987 is concerned, stands rejected. No costs. Consequently, connected miscellaneous petition is closed.

19.10.2024

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs

To

The Additional District Munsif Court,
Jayankondam.



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V.LAKSHMINARAYANAN, J.

grs

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