



C.R.P.(PD).Nos.2038, 2040 and 2041 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).Nos.2038, 2040 and 2041 of 2020
and C.M.P.No.12815 of 2020

A.Sadasivam

... Petitioner
(in all CRPs)

VS

K.Ayyasamy (died)

1.A.Viswanathan

2.Nanjammal

... Respondents
(in all CRPs)

Common Prayer: Civil Revision Petitions are filed under Article 227 of Constitution of India, praying to set aside the common fair and decreetal order dated 23.07.2020 passed in I.A.Nos.463, 464 and 465 of 2019 in O.S.No.905 of 2011 on the file of the III Additional Subordinate Judge, Coimbatore.

For Petitioner : Mr.S.Karthikei Balan
(in all CRPs)

For Respondents : Mr.T.Balaji
for M/s.A.Thiyagarajan
(in all CRPs)



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COMMON ORDER

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The petitioner herein filed these civil revision petitions challenging the order passed by the Court below dismissing his petitions to reopen the case, recall PW.1 and to produce additional documents.

2. The petitioner herein filed a suit seeking declaration of title and permanent injunction. The trial in the suit is already over and the matter is posted for argument. At this stage, the petitioner has come up with these petitions seeking to reopen the case, recall PW.1 and to produce additional documents. In the affidavit filed in support of these petitions, it was stated by the petitioner that the documents sought to be produced are very relevant documents for the purpose of proving his case and the same was found out only at the time of preparation for arguments. It was further stated that the documents were misplaced and the same could be traced out now only.

3. These petitions were resisted by respondents by filing counter affidavit.



4. The Court below dismissed the petitions on the ground that the documents sought to be produced were not referred in the pleadings of the petitioner. Further, certain documents which are produced now were already marked at the time of trial. Therefore, the Trial Court came to the conclusion that the petitions filed by the revision petitioner are unnecessary and consequently, dismissed the same.

5. The learned counsel appearing for the petitioner submitted that while considering the applications for production of additional documents and reopen the case, the Court should take a liberal approach. The learned counsel further submitted that the petitioner pleaded that there was family arrangement in the family between his father K.Ayyasamy and brother A.Viswanathan on 27.03.1997 and the documents now produced by the petitioner will be useful to prove that partition arrangement was acted upon.

6. The learned counsel appearing for the respondents vehemently opposed these applications on the ground that the suit was filed in the year 2011. When the suit was posted for arguments in the year 2019, the



petitioners have come up with these applications for production of certain documents. The learned counsel further submitted that the main aim of petitioner is to drag on the suit and marking of the documents which were already marked is not at all necessary.

7. It is seen from the records the petitioner has filed an application in I.A.No.465 of 2019 to produce certain documents, which were not produced along with the plaint. The petitioner wants to produce as many as 11 documents. The Documents Nos.1, 3 and 5 are registration copy of the Will dated 12.09.1997, Original Wills dated 12.03.1997 and 12.09.1997 allegedly executed by K.Ayyasamy in favour of his sons. In the plaint averment, there is no reference about the alleged Wills executed by Ayyasamy in favour of his sons namely the petitioner and 2nd respondent.

8. In such circumstances, the petitioner is not entitled to produce the Will, which was not even pleaded by him in his pleadings. The Document No.2, which is a registration copy of the Gift Settlement Deed executed by K.Ayyasamy in favour of A.Viswanathan was already marked as Ex.B2.



Therefore, the Document No.2 produced by the petitioner need not be marked again. The Document No.7 namely the xerox copy of the Partition Agreement dated 27.03.1997 is concerned, the copy of the same was already marked as Ex.A4. Hence, the Document No.7 need not be marked. Therefore, the petitioner is not entitled to produce Documents Nos.1, 2, 3, 5 and 7. The conclusion of the Trial Court with regard to Documents Nos.1, 2, 3, 5 and 7 is correct and the same is confirmed.

9. As far as the other documents namely Document Nos.4, 6 and 8 to 11 are concerned, as rightly pointed out by the learned counsel for the petitioner that those documents may be useful in deciding the question whether the partition arrangement pleaded by the petitioner was infact acted upon or not. The relevancy of those documents cannot be decided at this stage. The relevancy of the documents can be decided only at the time of final disposal of the suit.

10. The learned counsel for the respondents submitted that Document No.6 is insufficiently stamped document, therefore, it cannot be received in



evidence. At the time of considering the petition to produce additional document, the Court should not go to the admissibility of the document. The admissibility of the document can be decided only at the time of marking of the same. Therefore, the respondents are entitled to object to the marking of the documents when it is tendered in evidence.

11. Admittedly, these applications were filed by the petitioner when the suit was posted for final arguments. In the affidavit filed in support of these petitions, the petitioner has not given any convincing reason for his failure to produce these documents even at the time of filing of the plaint. However, it is stated by him that documents in question were misplaced and the same could be traced only now.

12. In view of the said averment and in the interest of justice, this Court is inclined to allow these petitions in respect of Documents Nos.4, 6 and 8 to 11. However, taking into consideration the stage of the suit, this Court is inclined to impose a cost of Rs.10,000/- on the petitioner to be paid to the respondents within a period of four weeks from the date of receipt of



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copy of this order. In case, the cost of Rs.10,000/- is paid by the petitioner within the time stipulated, all the Civil Revision Petitions shall stands partly allowed that the petitioner is permitted to produce Documents Nos.4, 6 and 8 to 11 filed along with I.A.No.465 of 2019, subject to proof, relevancy and objection of respondents. In case any document is insufficiently stamped, the same shall not be marked unless petitioner pays stamp duty together with penalty, if any. In case, the petitioner is failed to pay the said amount within the time stipulated, all the civil revision petitions shall stands dismissed automatically without any further reference to this Court.

13. With these observations, all the Civil Revision Petitions are partly allowed. No costs. Consequently, the connected civil miscellaneous petition is closed.

03.01.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To
The III Additional Subordinate Judge,
Coimbatore.

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S.SOUNTHAR, J.

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