



CRP No.252 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.252 of 2024 and
CMP No.1209 of 2024

1. Senthamarai
2. S.Karthik
3. S.Kumar

... Petitioners

Vs.

A.Selvam

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed in I.A.No.1 of 2023 in O.S.No.1233 of 2023, dated 11.10.2023 on the file of the Subordinate Judge, Ambattur.

For Petitioners : Mr.A.M.Krishnamoorthy

For Respondent : Mr.R.Ravindran

ORDER



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This Civil Revision Petition has been filed to set aside the order passed by the learned Subordinate Judge, Ambattur in I.A.No.1 of 2023 in O.S.No.1233 of 2023, dated 11.10.2023.

2. The brief facts leading to the filing of Civil Revision petition is as follows:

The petitioners herein are the defendants 5 to 7 and the respondent herein is the plaintiff in O.S.No.1233/2023, which was originally filed as O.S.No.46/2012 and subsequently transferred and renumbered as O.S.No.1233/2023. The above said suit was filed by the respondent/plaintiff against the defendants 1 to 7, including the petitioners herein, for declaration that that the plaintiff is the sole and absolute owner of the plaint A schedule property; and direct the defendants 2 to 4 to hand over vacant possession of the A schedule property; and also for damages and further damages for the use and occupation of the A schedule property; and also for permanent injunctions restraining the defendants from put up any building, alteration or modification over the A schedule property.



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2.1. In the above said suit, plaintiff side evidence was closed and when the case was posted for defendants' side evidence, the petitioners/defendants 5 to 7 have filed an application in I.A.No.1/2023 to receive nine documents, as mentioned in that application. The above application was partly allowed to receive eight documents alone, except the registered Will-Document No.67/2007. Challenging the order of dismissal for receipt of the Will, this civil revision petition has been filed.

3. Heard the learned counsel for the petitioner and I have perused the materials on record.

4. On perusal of records, it reveals that the petitioners are the defendants 5 to 7 and the respondent herein is the plaintiff in the above said suit. When the case was pending for defendants' side evidence, the petitioners/defendants 5 to 7 have filed an application to receive the documents, since the same were misplaced, while filing the proof affidavit.



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The document sought to be received are as follows.

1. Registered Will - Document No.67/2007 (17.10.2007).
2. Adangal Extract in the name of 5th defendant's husband Selvam.
3. Legal heir certificate of petitioner's husband
4. Electricity connection receipt in the name of petitioner for the suit property.
5. Old ration card for the suit property.
6. Aadhar Card for the suit property
7. Smart Card for the suit property
8. Voter ID card in favour of the petitioner (plaintiff)
9. Medical Protection ID card in favour of the petitioner/5thdefendant

Except the Will, dated 17.10.2007, all other documents, were allowed to be received, since the respondent/plaintiff has no serious objection. The learned Judge has observed that, at the time of filing written statement, the petitioners have not stated about the Will; and in the affidavit for receiving the documents also, there is no reason assigned for non production of the Will; further, during the cross examination of plaintiff also, the documents were not produced. Apart from that, since the Will is a registered document, dated 17.10.2007, the learned Judge has not accepted reason assigned by



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the petitioners/defendants 5 to 7 that the Will was misplaced and traced out recently, as it is not satisfactory and declined to receive the Will, as a document.

5. It is the contention of the learned counsel for the petitioners/defendants 5 to 7 that by virtue of the above Will dated 17.10.2007, registered as document No.67/2007, the 5th defendant has become the owner of the property and hence, to prove their case, the above Will is very essential.

6. It is objected by the learned counsel for the petitioner/plaintiff that, at the time of filing written statement the petitioners have not disclosed about the Will and even during the cross examination of PW1 also, no question was put forth about the Will. Therefore, the filing of the Will, belatedly, cannot be allowed to receive as a document and the learned Judge was in right to decline the reception of the Will and hence, there is no need to interfere the order passed by the Trial Court.



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7. It is an admitted fact that the respondent/plaintiff has filed the suit for declaration of title over the suit property and the same was denied by the petitioners by filing written statement that, all the defendants are in joint possession and enjoyment of the property; and each and every one, continued separate possession for their livelihood; and hence, the plaintiff cannot seek independent claim and exclusive right over the suit property. When the petitioners/defendants taken a stand that to prove their case, the Will is very essential, on the ground of delay alone, they should not be prevented to produce the Will and fair chance has to be given to all the parties to produce their relevant documents for adjudication of the dispute between them.

8. Further, the following decisions of the Hon'ble Supreme Court have also relied upon by the learned counsel for the petitioners to support their contentions, which is mentioned as follows.

i) Order passed in Civil Appeal No.3427/2020 in Sugandhi



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(dead) by Lrs. & anr. Vs. P.Rajkumar, dated 13.10.2020, by the Hon'ble Supreme Court of India.

ii) Order passed in Civil Appeal No.4096/2022 in Levaku Pedda Reddamma and others Vs. Gottumukkala Venkaa Subbamma and another, dated 17.05.2022, by the Hon'ble Supreme Court of India.

In the light of the decision of the Hon'ble Supreme Court and also in view of the discussions made in the earlier paragraphs, this Court is of the view that, refusing permission to a party in a civil suit to produce the Will lead to denial of justice. Further, the respondent/plaintiff has every chance to rebut the evidence produced by the petitioners/defendants. As such, the order passed by the learned trial Judge, insofar as the dismissal for reception of the Will is liable to be set aside.

7. In fine, this Civil Revision Petition is allowed. The Trial Court is directed to receive the Will dated 17.10.2007, document No.67/2007, to prove the case of the petitioners/defendants 5 to 7, in accordance with law and respondent/plaintiff also shall be given sufficient opportunities to rebut the evidence produced by the petitioners/defendants. Further, considering



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the fact that the suit is of the year 2012 (O.S.No.1233/2023 was originally filed as O.S.No.46/2012 and subsequently transferred and renumbered as O.S.No.1233/2023), the Trial Court is directed to dispose the above suit in O.S.No.1233/2023, within three months from the date of receipt of a copy of the order.

22.01.2024

Index: Yes/No
Internet: Yes/No
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To

The Subordinate Judge, Ambattur.



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V.SIVAGNANAM, J.,

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