



C.R.P.(MD)No.2396 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 28/02/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

C.R.P (MD) No.2396 of 2023

and

CMP (MD) No.12388 of 2023

Rajendran : Petitioner/3rd Petitioner/
3rd Defendant

Vs.

1.Chellammal
2.Challapandiyan
3.Marimuthu : R1 to R3/R1, R2 and R4/
Defendants 1, 2 and 4
4.Amutha
5.Yagavi
6.Kuveena : Respondents 4 to 6/
Respondents 1 to 3/
Plaintiffs

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 16/06/2023 In IA No.1 of 2023 in OS No.16 of 2019 on the file of the Subordinate Judge, Mudukulathur, Ramanathapuram District.

For Petitioner : Mr.G.Prabhu Rajadurai

For R1 to R3 : No appearance

For R4 to R6 : Mr.K.Kumaravel



C.R.P.(MD)No.2396 of 2023

O R D E R

WEB COPY This civil revision petition has been filed seeking to set aside the fair and decreetal order, dated 16/06/2023 In IA No.1 of 2023 in OS No.16 of 2019 on the file of the Subordinate Judge, Mudukulathur, Ramanathapuram District.

2.The facts in brief:-

The suit in OS No.16 of 2019 was filed by the plaintiff seeking the relief of partition and separate possession. The defendant appeared, filed written statement, issues framed and trial commenced. During the trial process, a petition was taken out by the defendant in IA No.1 of 2023 with the following averments:-

The deceased Sivakumar through the plaintiff claims the property was entrusted to other persons and obtained loan amount also. Around one Crore was indebted by Sivakumar to them, They are also ready to give a share to the plaintiff, if the plaintiff settle the loan amount borrowed by the deceased. The amount were transacted through the Bank's account. Those documents were also produced. But those transactions are denied. So they filed a petition to send for the account statement of the third defendant maintained in the Indian Overseas Bank



C.R.P.(MD)No.2396 of 2023

and Karur Vysya Bank mentioned in the petition. That was not resisted by the respondent. But the trial court dismissed the petition stating that already sufficient documents are produced, there is no necessity to summon the concerned official. So with that dismissed the petition.

3.Against which, this revision has been preferred.

4.As observed by the trial court, sufficient documents are produced and exhibited also. With will refer to the section 4 of the Bankers' Books Evidence Act, 1891, which would run thus:-

"4.Mode of proof of entries in bankers' books.-subject to the provisions of this Act, a certified copy of any entry in a bankers' book shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matter, transactions and accounts therein recorded in every case where, and to the same extent as the original entry itself is now by law admissible, but not further or otherwise."



C.R.P.(MD)No.2396 of 2023

5. Reading of the provision makes its position clear that the documents are deemed to be prime evidence, which can be admitted, it is not necessary to summon any officer.

6. What was summoned to bring the document. This is clarified by section 5 of the Act. Section 5 of the Act, reads as under:-

"5. Case in which officer of bank not compellable to produce books.-No officer of a bank shall in any legal proceedings to which the bank is not a party be compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause.

7. A combined reading of Sections 4 and 5 make the position very clear that it is always necessary for the court to summon the bank officer for bringing the accounts. The account itself established taken as a prime



C.R.P.(MD)No.2396 of 2023

evidence. No further proof is required unless specific cause is shown.

WEB COPY

8.Absolutely no specific cause has been shown by the petitioner in the petition. So the order passed by the trial court requires no interference

9.In the result, this civil revision petition is **dismissed**. No costs.

28/02/2024

Index:Yes/No
Internet:Yes/No
er

To,

The Sub Judge,
Muthukulathur,
Ramanathapuram District.



WEB COPY



C.R.P.(MD)No.2396 of 2023

G.ILANGOVAN, J

er

C.R.P (MD) No.2396 of 2024

28/02/2024