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C.R.P.(MD)No.3197 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 22/02/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.3197 of 2023

and

CMP (MD) No.16462 of 2023

1.V.Aparna Devi

2.P.Vijayakumar

: Petitioners/Respondents/
Plaintiffs

Vs.

1.V.Senthilraja

2.S.Valarmathi

: Respondents/Petitioners/
Defendants 1 and 2

PRAYER:- Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 16/10/2023 passed by the District Munsif Court, Sivakasi in IA No.06 of 2023 in OS No.93 of 2022 and pass such further or other orders.

For Petitioners : Mr.T.Lenin Kumar

For Respondents : Mr.N.Dilip Kumar

O R D E R

This civil revision petition has been filed seeking to set aside the fair and decreetal order, dated 16/10/2023 passed by the District Munsif, Sivakasi in IA No.06 of 2023 in OS No.93 of 2022.



C.R.P.(MD)No.3197 of 2023

2. The facts in brief:-

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The suit in OS No.93 of 2022 was filed by the petitioners herein as plaintiffs seeking the relief of permanent injunction and for costs. The defendants entered appearance, filed written statement. Pending trial process, a petition was taken out by the respondents herein by filing IA No.6 of 2023 for directing the plaintiffs namely the petitioners herein to produce the disputed Will. That was allowed by the trial court.

3. Against which, this civil revision petition is preferred.

4. The suit is filed by the plaintiffs stating that the suit properties comprised in Plot Nos.19, 33 and 34 were purchased by the mother namely Usha Devi, on 06/02/2008 at the arrangement made by the plaintiffs. Their father died, on 29/09/2012. The entire expenses were born by the first plaintiff. Apart from that, he is also maintaining the sisters and brothers. The mother also became sick and executed an unregistered Will, dated 21/01/2014. She died, on 11/08/2019. The Will came into effect and the first plaintiff sold the property in



C.R.P.(MD)No.3197 of 2023

favour of the second plaintiff, on 06/09/2019 through a Will. Later, the second plaintiff sold the property to the defendants 3 and 4.

5.Now the impugned petition is filed by the defendants 1 and 2 with the following averments:-

Since the original Will, dated 21/01/2014 is admittedly in the possession of the first plaintiff, it must be produced, since they are suspecting the genuineness of the document. The mother of the 1st plaintiff never executed any Will.

6.That was resisted by the petitioners stating that the original Will along with the documents were received by one Kanagavel stating that his employer is required the documents. Since that was not returned, he lodged a complaint, on 21/01/2014, since the document is not available, but in the custody of the defendants.

7.After hearing both sides, the petition was allowed directing the petitioners to produce the documents.

8.The legality of the order is called in question by the petitioners stating that Order XIII Rule 1 CPC is not



C.R.P.(MD)No.3197 of 2023

properly complied by the trial court. Similarly, Order XI Rule 12 to 14 CPC is not properly complied. Since no proper procedure is not followed, the order is not valid.

9. Heard both sides.

10. Order 11 Rule 12 to 16 CPC reads as follows:-

"O.11 R.12.-Application for discovery of documents.-Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application, the Court may either reuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit.



WEB COPY



C.R.P.(MD)No.3197 of 2023

O.11 R.13 Affidavit of documents:=

The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in Form No. 5 in Appendix C, with such variations as circumstances may require.

O.11 R.14 Production of documents: It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

O.11 R.15. Inspection of documents referred to in pleadings or affidavits. Every party to a suit shall be entitled at any time to give notice to any other party, in whose pleadings or affidavits



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C.R.P.(MD)No.3197 of 2023

reference is made to any document or who has entered any document in any list annexed to his pleadings or produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse with the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs as otherwise as the Court shall think fit.

O.11 R.16. Notice to produce.-

Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No. 7 in Appendix C, with such variations as circumstances may require."

11. So this according to the learned counsel appearing for the petitioners, since it is not complied, no doubt that there are some procedural mistakes not only



C.R.P.(MD)No.3197 of 2023

WEB COPY

on the part of the respondents herein, but also on the part of the Court. The Court ought to have exercised the power under Order XI Rule 11 CPC. But it has been simply directed the respondents to produce the document. Non-compliance of the order will not vitiate the order. It is only an irregularity.

12. But here, the problem arises in another angle. According to the petitioners, the original document is not available with them. It was obtained by one Kanagavel. But whether the above said statement is true or not can be a matter for consideration by the trial court at the relevant point of time.

13. Order 11 Rule 21 CPC speaks about the non-compliance, which would run thus:-

"O.11 R.21. Non-compliance with order for discovery.

(1) Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any struck out, and to be placed in the



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C.R.P.(MD)No.3197 of 2023

same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect and an order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard.

(2) Where an order is made under sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action."

14. So this will come into operation in the event of non compliance of the order. But here, as mentioned above, the petitioners disown the possession of the document. Whether the above said statement is true or not, as mentioned above, cannot be a matter for consideration at this stage. As per Order 11 Rule 20 CPC, that issue must be decided at the relevant time as mentioned above.

15. Order 11 Rule 20 reads as follows:-

"R.11 R.20. Premature discovery. -

Where the party from whom discovery of any kind or inspection is sought



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C.R.P.(MD)No.3197 of 2023

objects to the same, or any part thereof, the Court may if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection."

16.In view of the above said statement of the procedure, I am of the considered view that the issue is left open to be decided at the appropriate time by the trial court. But the order passed by the trial court will stand, there is no question to interfere into the order.

17.So this civil revision revision is liable to be dismissed and accordingly, it is dismissed, of course, with the above observations. No costs. Consequently connected Miscellaneous Petition is closed.

22/02/2024

Index:Yes/No
Internet:Yes/No
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C.R.P.(MD)No.3197 of 2023

To,

The District Munsif,
Sivagiri.



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C.R.P.(MD)No.3197 of 2023

G.ILANGOVAN, J

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C.R.P (MD) No. 3197 of 2023

22/02/2024