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C.R.P.(MD)Nos.76 and 77 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 08/02/2024

CORAM

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

C.R.P (MD) Nos.76 and 77 of 2024

and

CMP (MD) No.387 of 2024

(1) CRP (MD) No.76 of 2024:-

1.A.R.Sevugan Chetty

2.A.R.Thinnappan

: Petitioners/
Respondents 2 & 3/
Defendants 2 & 3

Vs.

1.Umaiya l

(Represented by through his agent
and Husband S.Lakshmanan)

: 1st Respondent/
Petitioner/Plaintiff

2.A.R.Subbiah

3.Visalakshi

4.Shanmugavalli

5.Parvathy

: Respondents 2 to 5/
Respondents 1, 4 to 6/
Defendants 1, 3 to 5

PRAYER:- Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 03/03/2023 made in I.A No.9 of 2023 in O.S No.9 of 2010 on the file of the Additional District Judge, Sivagangai.

For Petitioners : Mr.P.Thiyagarajan

For 1st Respondent : Mr.N.Tamil Mani



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(2) CRP (MD) No. 77 of 2024:-

A.R.Thinnappan

: Petitioner/Respondent/
3rd Defendant

Vs.

Umaiyaal
(Through her Power Agent
S.Lakshmanan)

: Respondent/Sole
Respondent/Plaintiff

PRAYER:- Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 07/10/2023 passed in I.A No.12 of 2023 in O.S No.09 of 2010 on the file of the Additional District Court, Sivagangai.

For Petitioners : Mr.P.Thiyagarajan

For Respondent : Mr.N.Tamil Mani

COMMON ORDER

CRP(MD)No.76 of 2024 has been filed seeking to set aside the fair and decreetal order, dated 03/03/2023 made in IA No.9 of 2023 in O.S No.9 of 2010 on the file of the Additional District Judge, Sivagangai, whereas CRP(MD)No.77 of 2024 is filed seeking to set aside the fair and decreetal order, dated 07/10/2023 passed in I.A No.12 of 2023 in O.S No.9 of 2010 on the file of the Additional District Judge, Sivagangai.



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2. The facts in brief:-

A suit in OS No.9 of 2010 was filed by the plaintiff namely Umaiyal against A.R.Subbiah and others seeking the relief of partition and separate possession. The defendants appeared, filed their written statement and issues framed, trial commenced. During the trial process, the plaintiff filed IA No.9 of 2023 seeking the leave of the court to produce the additional documents mentioned in the petition by condoning the delay. That was allowed without any costs.

3. Against which, CRP(MD)No.76 of 2024 is preferred by the defendants 2 and 3.

4. Similarly, the 3rd defendant also filed IA No.12 of 2023 seeking the leave of the court to produce certain documents by condoning the delay. That came to be dismissed by the trial court.

5. Against which, CRP(MD)No.77 of 2024 is preferred by the 3rd defendant namely A.R.Thinnappan.

6. Heard both sides.

7. Both are heard in common and a common order is passed.



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8.Let us take IA No.9 of 2023 for discussion first.

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9.That application was filed mentioning the following facts:-

The documents sought to be produced are relevant for proving the case. He could secure the documents only after thorough search. So there is a delay in producing the documents.

10.That was resisted by the defendants stating that the power deed executed in favour of S.Lakshmanan, who is the husband of the plaintiff is pertaining only to 'B' schedule property and in respect of 'A' and 'C' schedule properties, no power was conferred. So the power of attorney is not competent to file the petition.

11.Apart from that, it is also contended that the petition is filed after a lapse of 8 years. Arguments were also heard and after a lapse of 45 days, the petition was filed. But the trial court thought it fit to allow the petition on the ground that to give opportunity to the plaintiff to bring on record the nature and character of the suit properties, those documents can be received, since no prejudice will be caused.



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12. Against which, this civil revision petition is filed by the petitioner stating that now the documents sought to be produced are certified copies obtained as earlier on 25/08/2010 and 23/03/2015; That was not properly appreciated by the trial court; Now the documents sought to be produced are various sale deeds and encumbrance for various deeds; As stated by the trial court to bring on record the nature and character of the properties, now those documents are necessary for proper adjudication.

13. Another ground raised by the petitioners is that those documents were not pleaded in the plaint or in the reply statement, without pleading, those documents cannot be permitted to be marked.

14. But it is seen that those documents were executed by the defendants. Actually all the documents are certified copies of the sale deeds. As mentioned above, here the defendants namely the petitioners are the parties to the document, then those documents are required for the purpose of proper adjudication.



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15.I find no reason to entertain this petition since opportunity is always available to the petitioners to cross examine the witness.

16.No doubt that there is a delay on the part of the petitioners. But in the above said factual ground, I find that no irregularity or illegality has been committed by the trial court in allowing the petition.

17.So CRP(MD)No.76 of 2023 is liable to be dismissed and accordingly, it is dismissed.

18.So far as CRP(MD)No.77 of 2024 is concerned, IA No.12 of 2023 was preferred by the petitioner with the following averments:-

Disclaimer affidavits now sought to be produced executed by defendants 4, 5 and 6 and the deceased Sister Sarswathi were traced out recently. So they want to produce those documents.

19.That was resisted by the respondents stating that all those documents are forged documents. An endorsement is made as if the share of the plaintiff's sister was released. So those documents are not admissible in evidence.



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20.The trial court recorded a finding that those documents were pleaded in the written statement filed, on 17/06/2010 and in the proof affidavit; For relinquishment of the share, registered document is required. Those disclaimers documents and affidavits were not registered.

21.But the trial court has missed one important point that there is a difference between the reception of the document by condoning the delay. After condoning the delay, the documents can be received. In what way these documents be proved is a matter for consideration and within the jurisdiction of the trial court.

22.Whether those documents can be admitted in evidence must be decided by the trial court. But the deciding the admissibility and relevancy of the document while entertaining the petition under Order 8 Rule 1(A) (3) CPC is not permitted.

23.So in view of the above said procedural irregularity committed by the trial court, the impugned order is required to be interfered. Accordingly, it is interfered.



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24. With regard to the delay, even though, it has been stated that it has been traced out only recently, but here the trial process is not completed and petition filed by the plaintiff to receive the additional documents are allowed. So I am of the considered view that the delay caused in producing the documents by the petitioner must also be condoned. Accordingly, the delay is condoned and the petition filed by petitioner stands allowed. But with regard to the proof and relevancy, as stated above, the trial court may decide at the time of admitting the documents in evidence.

25. In the result, CRP(MD)No.76 of 2024 is **dismissed**. CRP(MD)No.77 of 2024 is **allowed** and the impugned order, dated 07/10/2023 passed in IA No.12 of 2023 in O.S No.9 of 2010 on the file of the Additional District Judge, Sivagangai is set aside. No costs. Consequently connected Miscellaneous Petition is closed.

08/02/2024

Index:Yes/No
Internet:Yes/No
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To,

The Additional District Judge,
Sivagangai.



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G.ILANGO VAN, J

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