

A. Moni and Others Vs. Usha and Others

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Court : Chennai Madurai

Decided On : Sep-19-2016

Judge : D. Krishnakumar

Appeal No. : C.R.P(PD)(MD)No. 1668 of 2016 & C.M.P(MD)No. 8151 of 2016

Appellant : A. Moni and Others

Respondent : Usha and Others

Judgement :

(Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying this Court to call for the records of the lower Court and to set aside the order and decreetal order, dated 19.3.2016 passed in I.A.No.142 of 2016 in O.S.No.496 of 2008, on the file of the District Munsif Court, Padmanabhapuram.)

1. This revision arises out of the order, dated 19.03.2016 passed in I.A.No.142 of 2016 in O.S.No.496 of 2008, on the file of the District Munsif Court, Padmanabhapuram to direct the second respondent/first defendant to produce the Birth Certificate, Election Identity Card and Aadhaar Card before the trial Court in the suit.

2. Counter affidavit has been filed by the second respondent/first defendant denying suit averments. After hearing the parties concerned, the trial Court observed that the prayer in the I.A has not been considered for the reasons that the Petitioner cannot compel the second respondent/first defendant to produce the

documents as sought for before this Court, in the application. Further, it has been observed that the suit has been pending for more than ten years before the said Court. Therefore at this stage, filing of the present application is belated one and therefore dismissed the said application. Aggrieved by which, the Petitioners have filed the present Civil Revision Petition before this Court.

3. Perusal of the order passed by the trial Court, it is seen that the trial Court has not relied upon the alleged Birth Certificate, Election Identity Card and Aadhaar Card. At this juncture, it is appropriate to consider the decision of the Division Bench of this Court in PR.Palaniappan Vs. T.R.Rathineswaran reported in 2009(3) CTC 121. wherein, the Division Bench of this Court has held in paragraph No.8 as follows:

8. We have carefully considered the said submission and we are unable to agree with the same. Sub Rule 3 of Rule 14 under Order VII contemplates that a document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. A combined reading of Sub Rules (1) and (3) of Rule 14 under Order VII would show that the production of documents is not mandatory for the plaintiff and those documents may be permitted to be produced, of course, by the leave of the Court at a later point of time, i.e. at the hearing of the suit. Of course, when the plaintiff approaches this Court for leave based on certain documents, it is for him to produce those documents and if those documents are not produced, then he will face the consequences. That does not mean that the defendant can, by an application, compel the plaintiff to produce the documents, which are in possession of the plaintiff, invoking Order VII Rule 14(1) C.P.C. In fact, the counter-affidavit filed by the appellants/plaintiffs in the earlier application in 4149 of 2003, it is stated that they have filed the photo copies of the original, necessarily meaning thereby that they are in possession of the original documents. There appears to be some apprehension on the part of the appellants that in the event those documents are filed into the Court, they may be tampered with. Therefore, they are withholding the documents. In the event those documents are filed into

Court at a later point of time, i.e. at the time of trial of the suit, it is open to them to convince the Court as to whether those documents are to be filed or not and it is equally open to the defendants also to oppose such documents on all available fours. Therefore, we are of the opinion that in exercise of the provision of Order VII Rule 14(1) C.P.C., the defendants cannot compel the plaintiffs to file certain documents, which are the basis for the plaint, as the said production is only directory and cannot be construed to be one of mandatory, in the wake of Sub Rule 3 of Rule 14 under Order VII.

4. Considering the facts and circumstances of the case and considering the fact that the Petitioner cannot compel the second respondent/first defendant to produce the documents afore-stated and that the application has been filed belatedly, the trial Court has come to a correct conclusion and accordingly dismissed the said application. This Court finds no merit in the revision warranting interference by this Court. Thus the revision Petition fails and hence the same deserves dismissal.

5. In the result, the Civil Revision Petition is dismissed. Consequently, connected Miscellaneous petition is dismissed. No costs.

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