

Gurusamy and ors. Vs. Santhanam

Gurusamy and ors. Vs. Santhanam

SooperKanoon Citation : sooperkanoon.com/834066

Court : Chennai

Decided On : Jun-18-2005

Reported in : (2005)4MLJ343

Judge : M. Thanikachalam, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 - Order 8, Rule 1-A(3) - Order 13, Rules 1 and 2; Code of Civil Procedure (CPC) (Amendment) Act, 1999; [Constitution of India](#) - Article 227; Code of Criminal Procedure (CrPC) - Sections 482; Prevention of Terrorism Act - Sections 34

Appeal No. : C.R.P. (PD) No. 100 of 2005, C.M.P. No. 899 of 2005 and VCMP No. 105 of 2005

Appellant : Gurusamy and ors.

Respondent : Santhanam

Advocate for Def. : N. Sundaresan, Adv.

Advocate for Pet/Ap. : V. Sitharanjandas, Adv.

Disposition : Petition allowed

Judgement :

ORDER

M. Thanikachalam, J.

1. Some of the defendants, who have failed in their attempt, seeking reception of certain documents, are the revision petitioners.
2. The respondent in this case has filed a suit against the defendants for partition and separate possession of her 1/12 share in the suit property, which is opposed by the defendants. While the suit is pending, the contesting defendants have filed a petition, of course, quoting a wrong provision for reception of documents, as detailed in I.A. No. 451 of 2004. Totally, they have filed 13 documents or so.
3. One of the documents filed along with the petition, dated 25.6.1984 appears to be a release deed. The plaintiff opposed the reception of documents on the ground, since the release deed sought to be produced is an unregistered one, the same cannot be received. As far as the other documents are concerned, I find from the counter affidavit that there was no objection for their reception.
4. The learned District Munsif, Ramnad, without going through the documents, only on the basis of the objections, since the document, dated 25.6.1984 is an unregistered one, the same cannot be exhibited in evidence, accepting the objection of the plaintiff as far as the one document is concerned, without assigning any valid reason even for not receiving the other documents, dismissed the petition on 21.7.2004, which is under challenge in this revision.
5. Heard the learned Counsel for the petitioners and the learned Counsel for the respondent.
6. The learned Counsel for the revision petitioners submitted that the petition is aimed only to condone the delay for the purpose of filing the documents, since they were not filed along with the written statement, and therefore condoning the delay, accepting the reasons alleged in the affidavit, since the same is satisfactory, the trial Court ought to have received the documents, subject to proof and relevancy and the admissibility of the documents in evidence, if at all has to be considered only at the time of marking the documents as exhibits, which stage has not reached. Therefore, according to him, the trial Court has committed an error

apparently deviating the procedures established and adopted, and therefore exercising the jurisdiction of this Court under Article 227 of the [Constitution of India](#), the said failure of the Court, which had not properly exercised its jurisdiction, has to be set right, by allowing this revision.

7. In response to the above submission, the learned Counsel for the respondent submitted that the revision itself is not maintainable under Section 115, C.P.C., and therefore circumventing the same, Article 227 of the [Constitution of India](#) cannot be invoked and in this view, the revision itself is, not maintainable. It is the further submission of the learned Counsel for the respondent that one of the documents sought to be filed being an unregistered document, captioned or styled as release deed with respect to the immovable property, the same cannot be admitted in evidence for want of registration.

8. Order 13, Rule 1, C.P.C. directs the parties or their pleader to produce all the documentary evidence along with the plaint or written statement and it also provides the documents could be filed before the settlement of issues. In this case, the petition filed must be only after the settlement of issues, since the suit was filed in the year 1999. At present, original Order 13, Rule 2, C.P.C, which was available to condone the delay in filing the documents, is not available under Order 13, C.P.C. Deleting that provision, Order 8, Rule 1-A(3) is introduced, which reads,

'A document which ought to be produced in Court by the defendant under this rules, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.'

thereby enabling the parties, who failed in their duty at the first instance, to seek permission of the Court to file the document. Therefore, in this case, the petition ought to have been filed under Order 8, Rule 1-A(3), C.P.C. Ignoring the misquoting of the provisions, we have to see the case on merit.

9. The submission of the learned Counsel for the respondent that the revision itself is not maintainable, as if there is a total ban, is not acceptable to me, in view of the pronouncement by the Apex Court, where it is declared that the power conferred under Article 227 of the [Constitution of India](#) could be invoked in certain cases.

10. The learned Counsel for the petitioners to sustain the maintainability of the revision under Article 227 of the [Constitution of India](#) relied on the pronouncements of Apex Court in Surya Dev Rai v. Ram Chander Rai and Ors., : AIR 2003 SC3044 ; Shail (Smt) v. Manoj Kumar and Ors., 2004 (4) SCC 785; and Yeshwant Sakhalkar and Anr. v. Hirabat Kamat Mhamai and Anr., : (2004)6SCC71 . In the first case, namely Surya Dev Rai case, the Apex Court, posing the question 'whether an aggrieved person is completely deprived of the remedy of judicial review, if he has lost at the hands of the original Court and the appellate Court, though a case of gross failure of justice having been occasioned can be made out', has held that the power of the High Court under Article 227 of the [Constitution of India](#) is always in addition to the revisional jurisdiction conferred on it, and therefore the curtailment of revisional jurisdiction of the High Court under Section 115, C.P.C. by Amendment Act 46 of 1999 does not take away and could not have taken away also. Thus, concluding, it is further observed that--

'the power exists, untrammelled by the amendment in Section 115 C.P.C, and is available to be exercised subject to rules of self-discipline and practice which are well settled.'

11. Affirming the above decision, a Full Bench of the Apex Court in Shail case, has held that the High Court not only has power to, make directions by way of guiding inferior Court or tribunal as to manner in which it would proceed hence, but also has jurisdiction itself to pass such a decision or direction as the inferior Court or tribunal should have made, thereby concluding, it is also said that the power under Article 227 of the [Constitution of India](#) has to be exercised sparingly and with care and caution.

12. Before Shail case, in Yeshwant Sakhalkar case, the Apex Court followed the decision in Surya Dev Rai case, wherein also it is held the revision is maintainable, but the same has to be exercised having regard to scope and ambit of Article 227 of the [Constitution of India](#).

13. On the other hand, to say that the revision is not maintainable even under Article 227 of the [Constitution of India](#), a decision of this Court in K. Subramaniam v. S. Balashanmugam, : (2005)2MLJ147 , was relied on by the learned Counsel

for the respondent, wherein this Court has held, that when an order cannot be revised under Section 115 of the Civil Procedure Code, revision under Article 227 of the [Constitution of India](#) would also not be maintainable. It appears the rulings of the Apex Court discussed above were not brought to the notice of the learned Judge and therefore, it appears to my mind, a view was taken as if, what is barred under Section 115, C.P.C. cannot be circumvented under Article 227 of the [Constitution of India](#), observing as said supra. In view of the law settled by the Supreme Court, in my considered opinion K. Subramaniam case fails to come to the aid of the respondent in this revision.

14. The learned Counsel for the respondent also invited my attention to a case State, through Special Cell, New Delhi v. Navjot Sandhu @ Afshan Guru and Ors., 2003 (7) SBR 111, wherein the scope of Article 227 of the [Constitution of India](#), Section 482, Cr.P.C. and Section 34 of POTA have been considered. The Apex Court, considering the specific bar imposed under Section 34 of POTA, has held that there was an attempt by the party concerned to circumvent the provision of Section 34 of POTA, which statutorily barred a revision. This kind of situation does not arise squarely in this case. Further, in view of the subsequent decision rendered by the Apex Court, as pointed out by me supra, I should conclude that this decision also fails to support the submission of the learned Counsel for the respondent.

15. For the foregoing reasons, accepting the submission of the learned Counsel for the revision petitioners, which is based upon the judicial pronouncements of the Apex Court, I conclude that the revision filed under Article 227 of the [Constitution of India](#) is maintainable. To what extent, the power conferred under Article 227 of the [Constitution of India](#) could be invoked by this Court, has to be seen, depending upon the facts and circumstances of the case. In this case, by the refusal of the trial Court, even to receive the document, at the first instance, the right, if any, available to the revision petitioner is curtailed, denied once for all, to establish his case, finally.

16. By going through the order of the trial Court, it is seen that the trial Court has deviated from the established norms and procedures, when a petition was filed to

receive the documents belatedly. Generally, those documents are received subject to proof and relevancy and the admissibility of the documents in evidence should be decided at the time of marking the same as exhibits and at the time of examination of the witnesses, thereby making it as evidence. Till such time, generally, the Court is not expected to go through the admissibility of the document (not barred), since the scope of the petition in this case is to condone the delay and to receive the documents. Mere producing the documents before the Court, whether it is registered or unregistered documents, may not amount to taking the same in evidence as understood in law, and there is further stage for the documents to take a shape of evidence, for relying, only at that stage, the admissibility on the basis of the stamp duty, registration, etc. has to be seen in detail. If the trial Court at that stage comes to the conclusion that the document is inadmissible (even marked) for want of registration, stamp duty, etc. can reject the same.

17. In this case, the objection appears to be that the document sought to be proved is itself inadmissible in evidence, whereas the objection is not towards the mode of proof, alleging the same to be irregular or insufficient. In this view, as settled by the Apex Court in *R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple*, 2004 (1) LW 728, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. Therefore, there cannot be any difficulty in receiving the document for the purpose of marking the same in evidence and if at all, it is always open to the other party to raise admissibility of the document.

18. It is always open to the Court even to receive the same, subject to the objection, or to reject the same. The trial Court, without adopting this procedure, straight away, dismissed the application, not only the disputed document, but also the other documents, which is untenable, thereby showing the trial Court had not exercised its jurisdiction properly, that too deviating from the procedure adopted, warranting this Court's interference under Article 227 of the [Constitution of India](#).

19. In this view, the jurisdictional error, in not exercising the jurisdiction properly, committed by the trial Court, should be set right by the supervisory power conferred upon this Court under Article 227 of the [Constitution of India](#), failing which this Court also fails in its duty, which should not be allowed to happen, considering the facts and circumstances of this case. For the foregoing reasons, I am of the view the revision deserves acceptance and the same is to be allowed.

20. In the result, the revision petition is allowed, setting aside the order of the trial Court in I.A. No. 451 of 2004 and the said application is also allowed. The documents are ordered to be received, subject to proof and relevancy. It is open to the respondent/plaintiff to raise the admissibility of the document, viz. Release deed No. 2, for want of registration, stamp duty or otherwise, at the time of examination of the witnesses and marking of the same as exhibit. No costs. Consequently, connected C.M.P. and V.C.M.P. are closed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com