

(2005) 07 MAD CK 0074
In the Madras High Court
Case No : C.R.P. (P.D.) No. 698 of 2004

Sornam, R. Gowthaman and R. Vennila	APPELLANT
Vs	
P.N. Thevachiammal	RESPONDENT

Date of Decision : 01-07-2005

Acts Referred:

Civil Procedure Code Amendment Act, 1999 — Order 7 Rule 14(3), Order 8 Rule 1A(3)
Civil Procedure Code, 1908 (CPC) — Order 13 Rule 1, Order 13 Rule 2, Order 8 Rule 1,
Order 8 Rule 1A(3), Order 8 Rule 2

Citation : (2005) 07 MAD CK 0074

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : Vanathi Srinivasan, for the Appellant; N. Mani, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—This revision is directed against the order of the Principal Subordinate Judge, Coimbatore, made in I.A. No. 134 of 2004

in O.S. No. 252 of 1997, dated 01-03-2004, dismissing the petition filed u/s 151 C.P.C. to reopen the case for the purpose of examining the

attestor of the Will and for examination of the witnesses mentioned in the petition. The Defendants are the Revision Petitioners.

2. The facts necessitated for disposal of this revision petition could briefly be stated thus:-

The suit properties relate to the landed property in S.F. No. 618-6.58 acres and the house bearing Door No. 4/95A. The Plaintiff Thevachiammal

has filed the suit for partition claiming 1/4th share in the suit properties. The parties are related as:-

Thevachiammal-Plaintiff

Rajamani Daughter Daughter

(died on April 1993)

= Sornam (D.1)

Gowthaman (D.2) Vennila (D.3)

Through her son Rajamani, the Plaintiff has filed the suit for partition claiming her 1/4th share.

The Defendants have filed the written statement on 2-11-1999 denying the Plaintiff's right of 1/4th share. According to the Defendants, the Plaintiff

is only entitled to get 1/8th share out of the suit property.

On 23-01-2002, the additional written statement was filed by the Defendants contending that the Plaintiff is entitled to only 1/12th share. Further,

the Defendants have also alleged that they have recently found a letter written by late Rajamani dated 9-3-1992. As per that letter, the deceased

Rajamani expressed his wish that the entire family properties should go to the Defendants, namely, his wife, son and daughter respectively. As per

that letter, the Plaintiff is not entitled to get any share out of the suit property.

The issues were framed on 23-09-2002. The additional issues were framed on 16-12-2003. On commencement of the trial, the parties adduced

evidence. On completion of evidence, the Court has posted the matter for judgment on 23-2-2004.

3. I.A. No. 134 of 2004 was filed on 13-2-2004. When the case was posted for judgment, the Defendants have filed this Application to reopen

the case to examine the attesor of the Will and another witness to prove the case of the Petitioners and also to mark the Will.

4. The Defendants resisted the Application contending that the document is inadmissible in evidence for want of registration and non-payment of

stamp duty and that the same cannot be admitted in evidence. When the document is inadmissible the question of examining the attesor of the Will

does not arise and the Application is filed only to delay the trial proceedings.

5. Upon consideration of the contentions of both parties, the learned Subordinate Judge, dismissed the Application finding that the document has

already been found to be inadmissible and that arguments were heard and the Application filed (after the case has been posted for judgment) is not

maintainable. The learned Judge has also observed that the petition has been

filed only to delay the further proceedings.

6. The learned counsel for the Revision Petitioners has submitted that an opportunity is to be given to the Petitioners/Defendants to prove the document. Drawing the attention of the Court to the contents of the letter/Will, the learned counsel has submitted that the letter contains the wishes of deceased Rajamani and that sanctity is to be attached to the same and that by denying the opportunity the Defendants are deprived of adducing the evidence to prove the document.

7. Countering the arguments, the learned counsel for the Respondent has submitted that when the additional issues have been framed even as early as 16-12-2003, the list of documents ought to have been filed within two weeks from thereon. Contending that it has already been observed that the ""letter"" in question was found to be inadmissible, the Revision Petitioners/Defendants were not right in filing the Application to examine the attester and other witness to prove the impugned document.

8. The main points that arise for consideration are:-

i. Whether the case posted for judgment has to be reopened for the purpose of examining the attester and marking the document ?
and

ii. Whether the impugned order dismissing the petition for reopening the case suffers from any material irregularity warranting interference ?

9. For appreciation of the contentious points, it is necessary to refer to the relevant dates :-

Written Statement was filed on ... 02-11-1999

Issues were framed on ... 23-09-2002

Additional Written Statement was

filed on ... 23-01-2002

Additional Issues were framed on ... 16-12-2003

Trial commenced and evidence closed.

Posted for judgment on ... 23-02-2004

Application(I.A.134/04)was filed on ... 13-02-2004

10. The additional written statement was filed on 23-01-2002. The additional issues were framed on 16-12-2003. In the order framing the issues,

it has been ordered that, ""List of Documents and Witnesses in two weeks. Trial by 05-11-2002."" As required under Order VIII Rule 1A(3)

C.P.C. copy of the impugned letter was not filed along with the additional written statement. Either after framing of the issues or additional issues,

the impugned letter/Will dated 9-3-1992 was not produced in the Court. The Application has been filed u/s 151 C.P.C. invoking the inherent

powers of the Court to reopen the case and thereby, to examine the attesor to the Will and also marking of the Will. Since the document has not

been produced earlier as required under Order VIII Rule 1A(3) C.P.C. the question of examining the witness to prove the document and receiving

the document does not arise. Rule 1 of Order XIII, as it stood prior to its amendment, allowed production of document "which has not already

been filed in Court". Now, after the C.P.C. Amendment Act 1999, under the new Rule 14(3) of Order VII and Rule 1A(3) of Order VIII,

documents not filed along with the plaint (or) written statement cannot be received in evidence at the hearing of the suit.

11. After the amendment, Order XIII reads: Original documents to be produced at (or) before the Settlement of Issues.--

(1) The parties or their pleader shall produce on or before the Settlement of Issues, all the documentary evidence in original where the copies

thereof have been filed along with plaint or written statement.

(2) The Court shall receive the documents so produced:

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

(3) Nothing in Sub-Rule (1) shall apply to documents--

(a) produced for the cross-examination of the witnesses of the other party;

(or)

(b) handed over to a witness merely to refresh his memory.

Rule 1 has been substituted by the new Rule, as per which, all documentary evidence in original are required to be produced before Settlement of

Issues. The Rule has been amended to introduce the following modifications:

1. Rules 1 and 2 of Order XIII have been substituted by new Rule 1.

2. The amendment provides that original documents of which copies have been filed along with the plaint and written statement shall be produced

at or before the Settlement of Issues. Power of the Court to receive documentary evidence at any subsequent stage of proceedings has been curtailed by omitting Rule 2.

The object of new Rule 1 is to prevent late production of suspicious documents and to curtail the power of the Court to receive the documentary evidence, when the copy of the Will was not produced along with the additional written statement as required under Order VIII Rule 1A(3)

C.P.C. the question of examining the attesor to prove the Will does not arise.

12. As noted earlier, the alleged letter/Will dated 9-3-1992 has not been produced along with the additional written statement, but sought to be filed only at the time when D.2 was examined as D.W.1. In view of the serious objection raised by the Plaintiff regarding the admissibility of the document, the same could not be marked. After closure of evidence and hearing the arguments, the case was posted for judgment on 23-2-2004.

At that stage, the I.A. No. 134 of 2004 has been belatedly filed. Though, the additional issues were framed as early as on 16-12-2003, the

Defendants have not produced the list of witnesses and the documents, which they are relying upon. The learned trial Judge has rightly dismissed

the Application on account of production of the document at a very late stage. It is also to be noted that the Will/letter has not been referred to in

the written statement filed earlier. The omission to give particulars regarding the letter/Will in question is a valid ground for refusing to entertain the

document and examine the witness to prove the same. The Defendants have not made out a good cause to the satisfaction of the Court for the

non-production of the document at the earlier stage.

13. Under such circumstances, when the case has been posted for judgment, the Defendants were not justified in filing the Application to reopen

the case. It is stated that the Plaintiff - Mother of Rajamani, is aged about 80 years. There is every reason to doubt that the Defendants have filed

the Application to delay the trial proceedings. The impugned order is well in accordance with the Provisions and it does not suffer from any

material irregularity warranting interference.

14. Therefore, for the foregoing reasons the order of the Principal Subordinate Judge, Coimbatore, made in I.A. No. 134 of 2004 in O.S. No.

252 of 1997, dated 01-03-2004, is confirmed and this Revision Petition is

dismissed. In view of the relationship between the parties, there is no order as to costs. The learned Principal Subordinate Judge, Coimbatore, is directed to dispose of the suit, within a period of one month from the date of receipt of a copy of this order.