

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, CHIDAMBARAM

PRESENT: Tmt. SUGANIYA SRI, B.A.B.L (Hons), M.L., PGDAML

ADDITIONAL DISTRICT MUNSIF, CHIDAMBARAM(FAC)

FRIDAY, THE 5th DAY OF APRIL 2024

IA.NO. 82/2024 IN OS.NO. 332/2008

1. Ramadoss (Died)

2. Giri

3. Punitha

....Petitioners/Plaintiffs

/Vs/

1. Ponnambalasamy mutt

@ K.C.T. Madalayam

Represented by its Madathipathi

....Respondents/Defendants

For Petitioner	Thiru.N.Rajendran, Advocate
Respondents	Thiru.A.Sambandam, Advocate
Relief Claimed	Petition filed under Order 11 Rule 12, Section 151 of CPC to direct the respondent to produce the documents mentioned in this petition.
Final Hearing	14.3.2024

Upon hearing the arguments of petitioner and respondents and after perusal of the entire records and having stood over for consideration till this day, this court delivers the following

ORDER

The case of petitioner:

1. The petitioners are the plaintiffs, and they are siblings. The suit is filed for the relief of specific performance of contract. The defendant is contesting the case through his counsel. The suit is now posted for cross-continuation of DW1, who is Madathipathi

Meyyappa Gnana Desiga Swamy. The DW1 in his cross-examination has admitted that he has been in possession of the petition mentioned documents. The petition mentioned documents are vital document to this case. If the said document are filed in this court, the truth will come light in and the petitioner will be able to prove his case. The documents are in the custody of defendant and only if this court orders the defendant to produce the document, he will produce the same. Hence, this petition.

The case of Respondents :

2. The Petition has been filed by the petitioner under Order XI Rule 12 of C.P.C with a prayer to pass an order directing the respondents/defendants to produce the documents 1 to 7 listed in the petition. Under Order XI Rule 12, any party can apply to the court for an order by court, directing any other party to make a discovery of the documents which are in possession of that party, relating to any matter in question, in the suit. If the court is satisfied that such discovery is not necessary, it may make an order depending on the relevancy of the documents for deciding any matter in the suit. If the court is of the opinion that the documents called for by the parties, are not necessary for disposing the suit fairly, then the court need not order discovery. Bearing this in mind, if we look at the application filed by the plaintiffs we can see that there is no prayer for discovery of the documents as contemplated in Order XI Rule 12 of C.P.C Secondly, it has also not been stated, in what way the documents mentioned in the petition are necessary for deciding any matter in question in the suit. Thirdly, it should also be stated, how the documents sought to be produced have any relevancy or necessarily for deciding any matter in question in this suit.

3. On facts, it can be found that the suit has been filed by the petitioner for specific performance for sale of the property as per Ex.A1 and A2. Both the documents are agreements to sell, said to have been entered into between the deceased 1st plaintiff and one Kasi Viswanatha Swamy who was the Madathipathi of the defendant Mutt from the

year 1988 to 25.06.1995. The defendant has pleaded that both Ex.A1 and A2 are not true, but forged documents, and no such agreement was entered into as Ex.A1 and A2 and both the documents are forged and concocted documents. Further, the payments under Ex.A1 was said to have been made on 18.10.1990, and the payment under Ex.A2 was said to have been made on 30.06.1992 are also denied. After these two dates, even as per the plaint, there were no transactions in respect of the suit property as between the 1st plaintiff and the defendant Mutt. The suit has been filed in the year 2008.

4. On the basis of the pleadings of both the parties, this court has framed the issues and the Trial commenced. The plaintiff side evidence has been closed and DW1 has been examined in chief and cross examined in part. At this stage, this application has been filed. By Order 11 Rule 16, any party's right to seek production of documents from the other party is confined to the documents referred to in the pleadings or affidavit of the other party. None of the documents now listed in the petition filed by the petitioner are referred to in the pleadings, or affidavit of the defendant. Hence the petitioner is not entitled to seek production of documents straight away. Inspection of documents referred in pleadings are governed by order 11 Rule 15, 17 and 18. Any other document which are not referred in the pleadings or affidavit cannot be ordered to be produced straightaway without a prior application, with a prayer for discovery of the documents. Even such as application, should specify the relevancy and the necessity of the documents for the issues to be determined in the suit. Without such a proper prayer, an application under order 11 Rule 12 of C.P.C is not maintainable legally.

5. Further, the prayer in the petition for production of the documents, seems to be an attempt to fish out particulars and documents which are confined to the administration of the Mutt which are privileged information. Hence this respondent submits that the application is not maintainable factually, because it does not disclose any element of relevancy and necessity and it is also legally not maintainable for the reason stated

above. This respondent reserves its right to state its further reply and details later, if the petitioner files any such application with a proper prayer for discovery as contemplated under order 11 Rule 12 of C.P.C. The respondent therefore prays that this court may be pleased to dismiss the petition with costs.

6. Now the point for consideration is whether the petitioners are entitled to get the relief as prayed for?

7. No oral and documentary evidence produced on both sides.

Points for consideration:

8. Heard both side Learned counsel. Material records perused. According to the petitioner, the petitioners are plaintiffs, and they are siblings. The suit is filed for the relief of specific performance of contract. The defendant is contesting the case through his counsel. The suit is now posted for cross-continuation of DW1, who is Madathipathi Meyyappa Gnana Desiga Swamy. The DW1 in his cross-examination has admitted that he has been in possession of the petition mentioned documents. The petition mentioned documents are vital document to this case. If the said document are filed in this court, the truth will come light in and the petitioner will be able to prove his case. The documents are in the custody of defendant and only if this court orders the defendant to produce the document, he will produce the same.

9. On the other hand, the defendant contends that suit has been filed by the petitioner for specific performance for sale of the property as per Ex.A1 and A2. Both the documents are agreements to sell, said to have been entered into between the deceased 1st plaintiff and one Kasi Viswanatha Swamy who was the Madathipathi of the defendant Mutt from the year 1988 to 25.06.1995. The defendant has pleaded that both Ex.A1 and A2 are not true, but forged documents, and no such agreement was entered into as Ex.A1 and A2 and both the documents are forged and concocted documents. Further, the

payments under Ex.A1 was said to have been made on 18.10.1990, and the payment under Ex.A2 was said to have been made on 30.06.1992 are also denied. After these two dates, even as per the plaint, there were no transactions in respect of the suit property as between the 1st plaintiff and the defendant Mutt. The suit has been filed in the year 2008. On the basis of the pleadings of both the parties, this court has framed the issues and the Trial commenced. The plaintiff side evidence has been closed and DW1 has been examined in chief and cross examined in part. At this stage, this application has been filed. By Order 11 Rule 16, any party's right to seek production of documents from the other party is confined to the documents referred to in the pleadings or affidavit of the other party. None of the documents now listed in the petition filed by the petitioner are referred to in the pleadings, or affidavit of the defendant. Hence the petitioner is not entitled to seek production of documents straight away. Inspection of documents referred in pleadings are governed by order 11 Rule 15, 17 and 18. Any other document which are not referred in the pleadings or affidavit cannot be ordered to be produced straightaway without a prior application, with a prayer for discovery of the documents. Even such as application, should specify the relevancy and the necessity of the documents for the issues to be determined in the suit. Without such a proper prayer, an application under order 11 Rule 12 of C.P.C is not maintainable legally. Further, the prayer in the petition for production of the documents, seems to be an attempt to fish out particulars and documents which are confined to the administration of the Mutt which are privileged information.

10. On perusal of records, it is seen that the suit is filed for the relief of specific performance of contract dated 18.10.1990 and 30.6.1992 thereby directing the defendant to execute the sale deed in favour of plaintiff. The suit property is located in TS.No.912 to an extent of 498 sq. ft under 29 sq. ft. The issues were framed on 16.11.2010 and on the side of plaintiff, PW1 to PW5 were examined and Ex.A1 to A17 was marked. On

the side of the defendant, the defendant was examined as DW1 on 27.11.2022. The defendant has filed written statement on 17.6.2009. The Plaintiff has admitted the title of the defendant, and alleged that before 26th June 1995 it was Shree Viswanatha Gnana Desiga Swamigal who headed the Mutt. It was also alleged that the plaintiff, one named Zuffair Ali on one side and Shree Viswanatha Gnana Desiga Swamigal on the other had entered into an agreement to sell the suit property and paid an advance of Rs.10,000/-. The sale consideration was fixed at Rs.91,000/- and the said agreement was entered on 18.10.1990. When the plaintiff and Zuffair Ali commenced to clean the suit premises, one named Singara Mudaliar represented a trust by name Thingal Keezhamai Madam alleged to have claim ownership over the suit property. Therefore, the suit in OS.No.28/1990 on the file of Sub-Court, Chidambaram was filed as against Singara Mudaliar. The said Shree Viswanatha Gnana Desiga Swamigal authorized the plaintiff to conduct the suit on behalf of the Mutt and expenses was met out by the plaintiff. The 1st appeal and 2nd appeal filed by the Singara Mudaliar was dismissed. The plaintiff expressed his readiness and willingness and issued notice to the defendant on 2007 and by the reply, the defendant has denied the sale agreement. During the pendency of the suit, the plaintiff has also given Rs.81,000/- to Shree Viswanatha Gnana Desiga Swamigal and again an agreement 30.6.1992 was entered.

11. On the other hand, the defendant in his written statement has completely denied the facts stated by the plaintiff. The defendant has admitted the fact that the plaintiff was close associate with previous Madathipathy and also an influential landlord. Taking advantage of close connection with the previous Madathipathy, the plaintiff has cooked the story. The suit is barred by limitation. Even after the verification of the entire records of Mutt, there is no proof for the alleged sale agreement, the suit is filed only to drag the suit property. In the petition, the plaintiff has sought for,

- (i). பொன்னம்பலசாமி மடம் (என்கிற) KCT மடாலயம் மற்றும் கோவிலூர் மடம் ஆகிய மடாலயங்களில் டிரஸ்டு பத்தரம்
- (ii). 1985, 1990 முதல் 1995, 2007, 2009ம் ஆண்டு உள்ள Day Book and Ledger
- (iii). 1985 முதல் 1995 வரை உள்ள காலத்தில் நிறைவேற்றப்பட்ட தீர்மானங்கள்
- (iv). 2000 மற்றும் 2001 நாச்சியப்ப சாமிகள் இருந்த காலத்தில் நிறைவேற்றப்பட்ட தீர்மானங்கள்
- (v). மடம் இந்து அறநிலைய ஆட்சித்துறையின் கீழ் இல்லை என்பதை காண்பிக்க விலக்கு (Exemption) வாங்கப்பட்ட உத்தரவு
- (vi). அறங்காவலர்கள் குழு கூட்டம் அதில் நிறைவேற்றப்பட்ட தீர்மானங்கள்
- (vii). ஆண்டவர் மன்றம்- கூட்டம் அதற்கான தீர்மானங்கள்

12. In this petition, the plaintiff has sought for trust deed of Koviloor Madam under which the defendant is operating, the ledger pertaining to the year 1985, 1990-1995, 2007, 2009, Resolutions pertaining to 1985-1995. 2000-2001, the order of HR& CE that the defendant mutt is an exempted mutt, the meeting held by the trustees and the resolutions passed by the trustees, the resolutions and meetings of Andavar Madam. From the cross examination of the DW1, it is clearly understood that from the questions posed and answers given by DW1, this petition has been filed by the plaintiff. None of these documents relates to the dispute in the suit. The suit is filed only for the relief of specific performance of contract and not of the trust suit. It is the burden of the plaintiff to prove the alleged sale agreement dated: 18.10.1990 and 30.6.1992. After a period of nearly 15 years of filing the suit, the plaintiff has filed this petition which is highly belated one in the view of this court. The Order 11 Rule 12 specifically relates to matter in question and the petition mentioned documents no way decides the disposal of the suit and the issues at hand. Furthermore, the petition under Discovery and inspection ought

to have been filed at the earliest point of time, before trial and cannot be filed from the answers given by defendant witness. Thus, for the aforementioned reasons, this court is of the view that there are no merits in this petition.

In the result, this petition is dismissed. No costs.

Order directly dictated to Steno-Typist, typed by her, corrected and pronounced by me in the Open Court on this, the 5th day of April 2024.

(Sd/-S.Suganiya Sri)

Additional District Munsif,
Chidambaram.

List of witnesses and documents on the both sides:

NIL

(Sd/-S.Suganiya Sri)

Additional District Munsif,
Chidambaram.