

**IN THE COURT OF DISTRICT MUNSIF, KATPADI, VELLORE DISTRICT
PRESENT: THIRU. K.VENKATESAN, B.A.,B.L.,
DISTRICT MUNSIF, KATPADI**

Monday, this the 21st Day of October – 2024

**I.A.No. 2 of 2023
In
O.S.No. 19 of 2018
(CNR.No.TNVL23-000029-2018)**

1. C. Saroja
2. C. Jayaraman
3. C. Ravichandran

.....Petitioners/Plaintiffs

-Vs-

1. Jaya
2. P. Chandra
3. Vijayalakshmi

.....Respondents/Defendants

This petition has come up today before this Court for orders, and upon hearing the arguments of Thiru. S.Babu, the Counsel for the Petitioners, and Thiru. A.Karthikeyan, the Counsel for the Respondents-1 & 2, and Thiru. M.Kulothungan, the Counsel appeared for 3rd Respondent has made endorsement as ‘the documents may be received subject to proof and relevancy’, and upon perusing the petition along with documents, counter, and the available case records, and having stood over for consideration till this date, this Court delivers the following:-

ORDER

This petition has been filed by the Petitioners/Plaintiffs under Order 7 Rule 14 (iii) and Section 151 of Code of Civil Procedure to grant leave for filing the petition mentioned documents.

1. **Brief averments of the Affidavit filed by the 2nd Petitioner is as follows:-**

The 2nd Petitioner is the 2nd Plaintiff in the above Suit, and he filed this petition on behalf of other Petitioners/Plaintiffs also, and he states that they have filed the above Suit for Declaration and consequential relief of possession, and for Mandatory Injunction, and after filing of above Suit, the Respondents have constructed the Suit property, and recently, they have taken photographs of the Suit property. Hence, the Petitioners could not file earlier before this Court, and the petition mentioned documents are essential to prove their case, and if same is not received, they will be put to irreparable loss and much hardship, and prayed to allow the petition.

2. **Brief averments of the Counter filed by the 2nd Respondent is as follows:- (Adopted by the 1st Respondent)**

2.1 The petition filed by the Petitioners is not sustainable either in law or on facts of the case, and the Respondents refuted the entire averments made in the petition, and stated that the Petitioners have not produced any single scrap of paper to substantiate their allegations levelled against them, and knowing fully well of the facts

that they had no case at all, and they had filed the above petition without any legal basis, and with ulterior motive to harass them to terms either one way or other.

2.2 Further the Respondents countered that the petitioners have not stated anything in the petition affidavit with regard to what is prevented them to file the alleged photographs and CD at the earliest point of time, and in order to delay the proceedings as long as possible, the Petitioners had been filed this petition to receive the documents. If the Petitioners have bonafidely approached this Court, certainly they have to file the same at the time of filing of the above Suit, but without assigning any valid or tenable reasons, the Petitioners have filed the above petition to fill up the lacuna in their case which could not be entertained by this Court, and prayed to dismiss the petition with costs.

3. Neither the Petitioners nor the Respondents have placed any oral or documentary evidence before this Court.

4. **Point for Consideration:-**

a) Whether the petition is entitled to be allowed or not?

5. **Answering to the Point:-**

Both sides has been heard. Records perused. Upon careful perusal of this case records, it is found that the Suit has been filed by the Plaintiffs for the relief of Declaration of their title over the 'D' Schedule property and for possession, and for Mandatory Injunction to direct the Defendants to remove the illegal structure or

construction put up over the 'D' Schedule property, and for Declaration of their 2/3rd right and title over the 'E' Schedule property as a Common Way, and for consequential Permanent Injunctions, and for Mandatory Injunction to direct the Defendants to remove the illegal structure or construction put up over the 'E' Schedule property, and for Permanent Injunction restraining the Defendants from putting up construction over the 'D' and 'E' Schedule properties, and for costs.

6. The present Petitioners are the Plaintiffs and the Respondents herein are the Defendants. On receipt of Summons, the Defendants-1 to 3 have duly appeared through respective Counsels, and the 1st Defendant had filed Written Statement on 28.06.2018, and the 3rd Defendant had filed Written Statement on 20.11.2018, and the 2nd Defendant had filed a Memo before this Court on 10.04.2019 stating the he is adopting the Written Statement of 3rd Defendant. Issues were framed as early as on 22.07.2019. Thereafter this case was stands posted for Trial. At that juncture, the Petitioners/Plaintiffs have filed the present petition to receive the petition mentioned documents i.e., Photographs & CD.

7. In the petition affidavit, it is stated by the Petitioners that recently they have taken photographs of the Suit property, and they could not filed the said documents earlier before this Court, and those documents are essential to prove their case. On the other hand, in Counter, the Respondents-1 & 2 have countered that the petition has been filed without any legal basis only to harass them and delay the proceedings, and the

Petitioners could have filed the petition mentioned documents at the earliest point of time, and this petition has been filed only to fill up the lacuna in their case.

8. Before parting with order, it is useful to refer the provisions of Order 7 Rule 14 CPC which obligates the Plaintiff to produce document upon which he has relied upon at the time of the presentation of the Plaint, and if not produced at that stage then such a document can be received in evidence only with the leave of the Court and not otherwise. Further, in terms of Order 7 Rule 14 of the Code, where a Plaintiff sues upon a document in his possession or power in support of his claim, he shall enter such document in a list, and shall produced it in Court when the Plaint is presented by him and shall, at the same time deliver the document and a Copy thereof to be filed with the plaint. Sub-rule (3) of Rule 14 thereof clearly provides 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 it 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.

9. In the present case on hand, it is fairly admitted by the Petitioners/Plaintiffs that the petition mentioned 2 Documents are not filed at the time of filing of the Suit, which is enough to show that those documents are not available at the time of filing of the Plaint, and not listed as documents in the List of Documents in Plaint. The petition mentioned documents 1. Photographs (6 Nos'), 2. Compact Disc (No.1).

10. In the petition affidavit, the Petitioners have stated that after filing of the above Suit, the Respondents have constructed the Suit property, and they recently taken photographs of the Suit property, which proves that those documents are subsequent to filing of the Suit. Hence, it is evident that the said documents were not available on the hands of Plaintiffs, and the same was not filed along with the Plaint before this Court. Therefore, the question raised by the Respondents as to why the said documents not produced by the Plaintiffs at the time of filing of the suit, does not inspire the Court and the same is not acceptable one.

11. In Plaint, already the Plaintiffs have sought the relief of Permanent Injunction restraining the Defendants from putting up construction over the 'D' and 'E' Schedule properties. The proposed documents are nothing but the documents would going to show the construction over the Suit property. It is imperative to note that herein the Respondents have not denied the alleged construction made by them after filing of the Suit, and more over, the Respondents have not disputed the relevancy of the petition mentioned documents.

12. Further, in this case, the trial is not commenced yet. Considering the above all, this Court is of the view that the other contentions of the Respondents are not sustainable. Hence, this Court opine that the petition mentioned documents can be received in evidence on the side of Petitioners/Plaintiffs only if they satisfy the provisions of Section 65 (B) of the Indian Evidence Act which mandates the filing of

Certificate has been complied with. Considering the said facts and circumstances of the case, this Court is of the view that no pre-judice will be caused to the Respondents if the documents are allowed to be produced and will not change or alter the rights, hence, in the interest of the ends of justice, this Court is inclined to allow this petition. Accordingly, this point is answered in favour of the Petitioners/Plaintiffs.

13. **Result:-**

From the above discussions and in the interest of justice, this petition is allowed and the documents listed along with the petition are received in evidence on the side of Petitioners/Plaintiffs on subject to satisfaction of Section 65 (B) of the Indian Evidence Act & proof, relevancy and its admissibility, and no costs.

-//Dictated to the Steno-typist and directly typed by her in computer and after rectification taken print out and pronounced by me in the Open Court, on this the 21st Day of October – 2024.//-

(Sd/-).. K.Venkatesan
DISTRICT MUNSIF
KATPADI

Both sides documents and witnesses: NIL

(Sd/-).. K.Venkatesan
DISTRICT MUNSIF
KATPADI