

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

Friday, this the 12th Day of July – 2024

**I.A.No. 2 of 2023
In
O.S.No. 60 of 2015
(CNR.No.TNVL23-000182-2015)**

1. Carolyn Whitwell

2. David Whitwell

(Petitioners-1 & 2 are represented by their Power of Attorney – K.Ravi)

3. K.Ravi

4. R.Nirmala

.....Petitioners/Defendants-1 to 4

-Vs-

1. Bishopston Kuppam Link and Bishopston Trading Company

Represented by K.Sasivannamaran

.....Respondent/Plaintiff

2. The Collector, Vellore District

3. The Tahsildar, Katpadi

4. The Village Administrative Officer, Veppanganeri

5. The Sub-Registrar, K.V.Kuppam

6. The Junior Engineer, O&M/TNEB/K.V.Kuppam

.....Respondents/Defendants-5 to 9

This petition has come up today before this Court for orders, and upon hearing the arguments of Thiru. G.Rajendiran, the Counsel for the Petitioners, and the Respondents-1 to 6 were called absent and set ex-parte on 23.11.2023 for non-filing of Counter, and

upon perusing the petition, and the available case records, and having stood over for consideration till this date, this Court delivers the following:

ORDER

1. This petition has been filed by the Petitioners Under Order 13 Rule 9 of Code of Civil Procedure read with Rule 81 of the Civil Rules of Practice and Under Section 151 of Code of Civil Procedure to return the admitted document marked as Ex.P-1 on the side of 3rd Petitioner/3rd Defendant in I.A.No.272/2016.

2. In petition affidavit, the 3rd Petitioner submits that he is the 3rd Defendant in the above Suit, and he filed the affidavit on behalf of other petitioners also, and the 1st Respondent/Plaintiff filed the present Suit for bare injunction as if he has a semblance of right to institute against the Petitioners/Defendants-1 to 4, and the 3rd Petitioner also appearing for 1 & 2-Petitioners/Defendants-1 & 2 as their lawful Power of Attorney to conduct the present Suit proceedings. The Power of Attorney Deed dated 24.09.2013 stands in the 3rd Petitioner's name was executed and attested in the Consular Office of India at London for Authentication as a Legal Document, and the same was adjudicated before the District Registrar, Vellore on 02.12.2013 as Adjudication No.171/2013. The 3rd Petitioner have filed a petition in I.A.No.272/2016 to permit him to represent and conduct the proceedings on behalf of the 1 & 2-Petitioners/Defendants-1 & 2, and the same was allowed on 19.02.2019 by this Court, and he have marked the Original Power of Attorney Deed dated 24.09.2013 stands in his name as Ex.P-1, and he is legally

entitled to get back the same, and he has substituted Certified Copy of Ex.P-1 obtained from this Court, and he undertake to produce the Original if required to do so by this Court, and prayed to return the admitted document marked as Ex.P-1 on the side of him in I.A.No.272/2016.

3. Notice given to Respondents. Even after providing sufficient opportunities, the Respondents-1 to 6 have failed to file their respective Counter and then, the Respondents were called absent, and set ex-parte on 23.11.2023 for not filing Counter.

4. Neither the Petitioner nor the Respondents had placed any oral or documentary evidence before this Court.

5. **Points for Consideration:-**

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

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

Heard. Records perused. Upon careful analysis, it is found that the Petitioners herein are the Defendants-1 to 4 in the above Suit which was filed by the 1st Respondent/Plaintiff for the relief of Permanent Injunction, and for costs. After service of Summon, the 3rd Petitioner herein has filed petition Under Order 3 Rule 2 of CPC in I.A.No.272/2016 and sought permission of this Court that the 1 & 2-Petitioners/Defendants-1 & 2 be represented by him as Power Agent and to conduct the Suit on their behalf.

6.1 During the above said I.A enquiry, the General Power of Attorney dated 24.09.2013 stands in the name of 3rd Petitioner/3rd Defendant was marked as Ex.P-1 on his side, and this Court has passed a contested Order on 19.02.2019 and permitted the 3rd Petitioner/3rd Defendant to conduct the Suit on behalf of 1 & 2-Petitioners/Defendants-1 & 2 as Power of Attorney by allowing the said petition. Assailing the said Order, the 1st Respondent/Plaintiff has challenged the same before the Hon'ble High Court of Madras in C.R.P. (PD) No.124 of 2020 and C.M.P.No.743 of 2020, and subsequently, not pressed the same, and hence, the said Civil Revision Petition was dismissed as not pressed on 20.12.2021. As on date, the above said Suit is still pending for disposal. At this juncture, the Petitioners/Defendants-1 to 4 had filed this petition with a plea to return the document Ex.P-1 marked in I.A.No.272/2016.

7. It is necessary to refer Order 13 Rule 9 CPC. **“9. Return of admitted documents:**

- (1) Any person, whether a party to the Suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under 8, be entitled to receive back the same-
 - (a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and

(b) where the suit is one in which an appeal is allowed, when the court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been disposed of:

Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying there for-

(a) delivers to the proper officer for being substituted for the original,

(i) in the case of a party to the suit, a certified copy, and

(ii) in the case of any other person, and ordinary copy which has been examined compared and certified in the manner mentioned in sub-rule (2) of rule 17 of Order VII, and

(b) undertakes to produce the original, if required to do so;

Provided also, that no document shall be returned which, by force of the decree, has become wholly void or useless.

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.”

7.1 A reading of the above provision makes it clear that a person who produces a document in the Court is entitled to receive/get back the same on the following circumstances:

1. Sub Rule 1 (a) deals with a case where the suit has been disposed of, against which no appeal is provided.

2. Sub Rule 1 (b) contemplates where the appeal is allowed, if no appeal is filed within the time stipulated for preferring the appeal or appeal has been filed and is disposed of.

3. The proviso of Sub Rule 1 deals with the case which does not fall under the above mentioned two circumstances and that the document can be returned at any time earlier than that prescribed by Sub Rule 1, if a party substitutes a certified copy of the document, which is already marked and undertakes to produce the original if required to do so.

7.2 On an application being made by a party under the above proviso of Order 13 Rule 9 of CPC, the documents are necessarily returned if the application is in the proper form and the applicant is ready to comply with the conditions of substituting the certified copy of the document and undertaking to produce the original if required to do so.

8. The contention of the Petitioners is that during enquiry in I.A.No.272/2016 on his side marked Ex.P-1, and he undertakes to produce the said Ex.P-1 if returned to him by the order of this Court. On contra, the Respondents were called absent and set ex-parte.

9. Admittedly no doubt, the 3rd Petitioner has filed said Ex.P-1 on his side during enquiry in I.A.No.272/2016, and no revision is pending as against the said I.A.

order as on date. Hence, the Petitioners are entitled to get back the said Ex.P-1 as per Order 13 Rule 9 of CPC. Accordingly, the Point is answered in favour of the Petitioners.

10. **Result:-**

From the above said discussions, in the interest of justice, this petition is allowed with condition that the 3rd Petitioner is directed to produce the Certified Copy of Ex.P-1, and to file separate undertaking affidavit to produce the said original Ex.P-1 as and when directed by this Court. No costs.

-//Dictated by me to the Steno-Typist, who directly typed the same, corrected and pronounced by me in the Open Court, on this the 12th Day of July – 2024.//-

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

Both sides documents and witnesses: Nil

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