

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2017

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THE HONOURABLE Mr. JUSTICE M.SUNDAR

C.R.P.(PD)Nos.1168, 1169 of 2017
and C.M.P.No.5579 of 2017

Thulasi

.. Petitioner in
both CRPs.

..VS..

1.Kowsalya
2.Prakash
3.Elangovan
4.Prabhakari @ Pappi

.. Respondents in
both CRPs.

Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India, praying against the decree and common judgment dated 06.03.2017 in I.A.Nos.1748 & 1747 of 2017 in O.S.No.5281 of 2012 on the file of learned XII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Ms.B.Adhilakshmi for Mr.V.S.Mannarsamy
For Respondents : Mr.V.Bhiman

COMMON ORDER

There are two civil revision petitions. Plaintiff in the trial Court is revision petitioner in both the civil revision petitions before me. Private

defendants 1 to 4 in the trial Court have been arrayed as respondents 1 to 4 in the civil revision petitions before me. (Fifth defendant in the trial Court is an official respondent namely, Sub-Registrar, Kodambakkam).

2.I refer to the parties by their respective ranks in the trial Court for the sake of convenience and clarity.

3.The suit is one for partition and separate possession. There are also some other incidental and ancillary prayers such as declaration that the registered document is null and void and for mesne profits.

4.It is seen that pending suit, the plaintiff took out two applications being I.A.Nos.1747 and 1748 of 2017 for reopening the defendants' side evidence and recalling D.W.1.

5. The trial Court, after hearing both sides, has dismissed these two applications. The main ground on which the trial Court dismissed the applications is that these applications have been taken out at the stage of arguments. Trial Court has also observed that sufficient and adequate

opportunities have been given for cross-examination of D.W.1. In other words, the trial Court has held that no useful purpose would be served and it may not be fair to reopen and recall at the advanced stage of the suit, particularly, when it is at the stage of arguments.

6.The trial Court has also elaborately set out the various dates on which D.W.1 was cross-examined to buttress the ground that adequate opportunities have been given earlier.

7.Be that as it may, I find that if the defendants' side evidence is reopened and D.W.1 is recalled, no prejudice or hardship would be caused to the plaintiff.

8.Adequate opportunities for cross-examining D.W.1 is one aspect to the matter, but no prejudice would be caused, if the applications are allowed.

9.However, considering the fact that the suit is of the year 2012, this Court is of the view that it may be an appropriate case for setting aside the

order of the trial Court, which have been called in question in these civil revision petitions to fix a time frame for disposal of the suit.

10. I am taking this Course in the light of the fact that it is a partition suit and also as stated supra, no prejudice or hardship would be caused, if the matter is reopened and D.W.1 is recalled now.

11. Therefore, both the orders of the trial Court made in I.A.Nos.1747 and 1748 of 2017 are set aside.(Both the orders are dated 06.03.2017).

12. The trial Court is directed to reopen the defendants' side evidence, recall D.W.1 and hear the matter as expeditiously as possible.

13.The trial Court is directed to dispose of the matter at the earliest and in any event, within three months from the date of receipt of a copy of this order.

14. The Civil Revision Petitions are allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

15.Mr.V.Bhiman, learned counsel appearing for the defendants 1 to 4 would submit that his client D.W.1 (third defendant in the suit) would appear before the trial Court and present himself for cross-examination on 17.04.2017.

16.Plaintiff shall avail the opportunity on that day. D.W.1 (third defendant in the suit) shall be available on 18.04.2017 also. If the petitioner does not avail the opportunity on 17.04.2017 and 18.04.2017, no further opportunity shall be given by the trial Court, defendants' side evidence shall be closed without further reference to this Court and the trial Court shall proceed with the suit.

04.04.2017

Index:Yes/No

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**Note:Registry to issue
order copy on 10.04.2017.**

To

XII Assistant Judge, City Civil Court, Chennai.

M.SUNDAR, J.

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