

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2017

CORAM

THE HON'BLE MR. JUSTICE M. DURAISWAMY

C.R.P.(PD)Nos.1214 & 1215 of 2017 &

C.M.P.Nos.5752 & 5753 of 2017

M.Gopal

... Petitioner in both CRPs

v.

V.K.Venkadachalapathy

... Respondent in both CRPs

C.R.P.(PD)Nos.1214/2017 filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 6.2.2017 made in I.A.No.1040 of 2016 in O.S.No.240 of 2012 on the file of the I Additional District Munsif Court, Salem.

C.R.P.(PD)Nos.1215/2017 filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 6.2.2017 made in I.A.No.957 of 2016 in I.A.No.1299 of 2012 in O.S.No.240 of 2012 on the file of the I Additional District Munsif Court, Salem.

For Petitioner : Mr.P.K.Harinath Babu

COMMON ORDER

Challenging the fair and final orders passed in I.A.No.1040 of 2016 and I.A.No.957 of 2016 in I.A.No.1299 of 2012 in O.S.No.240 of 2012 on the file of the I Additional District Munsif Court, Salem, the plaintiff has filed the above Civil Revision Petitions.

2. The plaintiff filed the suit in O.S.No.240 of 2012 for declaration and permanent injunction. The defendant filed his written statement and is contesting the suit.

3. After the commencement of the trial, the plaintiff took out an application in I.A.No.957 of 2016 in I.A.No.1299 of 2012 to reopen the application and direct the Advocate Commissioner to inspect the suit property. I.A.No.1299 of 2012 was filed by the plaintiff seeking for appointment of an Advocate Commissioner, which was not pressed by the plaintiff. Therefore, the application in I.A.No.1299 of 2012 was

dismissed on 16.04.2015 as not pressed. Thereafter, the plaintiff filed the application in I.A.No.957 of 2016 to reopen the application in I.A.No.1299 of 2012. The application filed by the plaintiff was opposed by the defendant stating that the same has been filed at a belated stage.

4. The Trial Court, after taking into consideration the case of both the parties, dismissed the application in I.A.No.957 of 2016 in I.A.No.1299 of 2012 finding that the application has been filed by the petitioner at a belated stage and therefore the application in I.A.No.1299 of 2012 cannot be reopened, that too, after the completion of the oral evidence on the side of the plaintiff. The reasoning given by the trial court is just and proper.

5. I.A.No.1040 of 2016 has been filed by the defendant to recall D.W.1 for further examination. In the affidavit filed in support of the application, the defendant has stated that the Advocate Commissioner's report and plan marked in O.S.No.484 of 2012 are necessary for proper adjudication of the present suit and that the said documents were not produced before the trial court inadvertently. Therefore, the present

application has been filed by the defendant to recall D.W.1 for further examination for the purpose of marking the said document. The plaintiff opposed the application.

6. The Trial Court allowed the application in I.A.No.1040 of 2016 finding that in the interest of justice, the defendant can be given an opportunity to produce the document. That apart, the present application has been filed immediately after the closure of the evidence of D.W.1. It cannot be stated that the application has been filed at a belated stage. In order to give an opportunity to the defendant, the Trial Court has rightly allowed the application.

7. In these circumstances, I do not find any error or irregularity in the orders passed by the Trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Since the suit is pending from 2012, I direct the I Additional District Munsif Court, Salem, to dispose of the suit in O.S.No.240 of 2012, within a period of four months from the date of receipt of a copy of this order. Since the application in I.A.No.1040 of 2016 is filed by the defendant for recalling

D.W.1, it is needless to say that the plaintiff shall have an opportunity of cross examining D.W.1, when the said witness is recalled.

With these observations, the Civil Revision Petitions are dismissed.
of. No costs. Consequently, connected miscellaneous petitions are closed.

28.03.2017

Index : Yes/No

Rj

To

I Additional District Munsif Court
Salem

M. DURAISWAMY,J.,

Rj

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