

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.1495 and 1496 of 2014
& M.P.Nos.1,1 of 2014

R.Palaniswamy

.. Petitioner
in both CRPs.

Vs.

1.Krishnaveni
2.P.Muthukumar @ Muthu Vaduganathan
3.P.Gurukrishnan
4.K.Gopalakrishnan

.. Respondents
in both CRPs.

COMMON PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the fair and decretal order dated 03.08.2013 made in I.A.Nos.348 and 349 of 2013 in I.A.No.645 of 2012 in O.S.No.256 of 2008 on the file of the III Additional Subordinate Court, Coimbatore.

For Petitioner : Mr.P.S.Kothandaraman

For R2 : Mr.J.Pothiraj

For R1, 3 & 4 : No Appearance

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COMMON ORDER

The Civil Revision Petitions are filed against the fair and decretal order dated 03.08.2013 made in I.A.Nos.348 and 349 of 2013 in I.A.No.645 of 2012 in O.S.No.256 of 2008 on the file of the III Additional Subordinate Court, Coimbatore.

2. The issues in both the Civil Revision Petitions are interlinked and hence, they are disposed of by this common order.

3. The petitioner is the second defendant, first respondent is the first defendant, respondents 2 and 3 are the plaintiffs and fourth respondent is the third defendant in O.S.No.256 of 2008 on the file of the III Additional Subordinate Court, Coimbatore. The respondents 2 and 3 filed the said suit for declaration and injunction against the petitioner and respondents 1 and 4. The first respondent filed written statement on 01.09.2008 and the same was adopted by petitioner and fourth respondent. The petitioner and respondents 1 and 4 filed I.A.No.479 of 2008 under Order VII Rule 11 read with Section 151 of C.P.C., for rejection of plaint and I.A.No.480 of 2008 under Section 12(2) of the Tamil Nadu Court

Fees and Suits Valuation Act, to determine the actual market value of the suit properties. The first respondent filed I.A.No.596 of 2010 under Order VI Rule 17 and 151 of C.P.C., to permit the petitioner to amend the written statement. The first respondent also filed I.A.No.645 of 2012 under Order 23 Rule 1(a) and Section 151 of C.P.C., to transpose her from first petitioner to third respondent in I.A.No.479 of 2008 filed by her along with the petitioner and fourth respondent under Order VII Rule 11 read with Section 151 of C.P.C., for rejection of plaint.

4. After hearing the arguments in I.A.No.645 of 2012, it was posted for orders on 06.04.2013. At this stage, the first respondent filed two applications in I.A.Nos.348 and 349 of 2013 to condone the delay in filing the additional documents and to reopen I.A.No.645 of 2012 respectively.

5. According to the first respondent, without her knowledge, the petitioner filed I.A.No.479 of 2008 for rejection of plaint and therefore, she has filed I.A.No.645 of 2012 for transposing her from first petitioner to third respondent. In the said I.A.No.645 of 2012, first respondent intends to file certain additional documents to prove

her case, which is relevant to the case. The petitioner could not produce the documents earlier due to non availability of the same. Therefore, it is necessary to reopen I.A.No.645 of 2012 and receive the additional documents.

6. The petitioner filed counter affidavit in both the applications and denied all the averments made in the said applications and submitted that the first respondent has come out with a new case contrary to her earlier stand taken by her in the application filed by her for rejection of plaint in I.A.No.479 of 2008. The averments made in the plaint and documents filed along with the plaint only are to be taken into consideration and prayed for dismissal of both the applications.

7. The learned Judge, considering all the averments made in the affidavit, counter affidavit and documents filed along with the plaint, allowed the applications holding that the first respondent has filed documents only in the application for transposing her from first petitioner to third respondent in I.A.No.645 of 2012 and all the documents sought to be filed are original registered documents and copies of the plaint in the two suits. The learned Judge further held

that the petitioner and other respondents can make objection with regard to admissibility and relevancy of the documents at the time of enquiry.

8. Against the said order dated 03.08.2013 made in I.A.Nos.348 and 349 of 2013 in I.A.No.645 of 2012, the present two Civil Revision Petitions are filed by the petitioner.

9. Heard the learned counsel for the petitioner as well as second respondent and perused the materials available on record.

10. From the materials available on record, it is seen that the first respondent has filed I.A.No.645 of 2012 for transposing her from first petitioner to third respondent in I.A.No.479 of 2008. In I.A.No.645 of 2012, arguments were advanced and orders were reserved. At this stage, the first respondent filed the present two applications in I.A.Nos.348 and 349 of 2013 to condone the delay in filing the additional documents and to reopen I.A.No.645 of 2012 respectively. The petitioner opposed the said applications on the ground that in the application for rejection of plaint, only the averments made in the plaint and documents filed along with the

plaint can be considered and first respondent is taking contrary stand to destroy her case. This contention of the petitioner is misconceived to the facts of the present applications. The first respondent filed I.A.No.479 of 2008 for rejection of plaint. The first respondent has not filed any documents in I.A.No.479 of 2008 for rejection of plaint.

11. The learned Judge considering all the above facts, allowed both the applications holding that admissibility and relevancy of document can be decided at the time of enquiry. The learned Judge also held that it is open to the petitioner and fourth respondent to raise their objections with regard to admissibility and relevancy of the document at the time of enquiry. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 03.08.2013.

12. In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition are closed.

20.11.2017

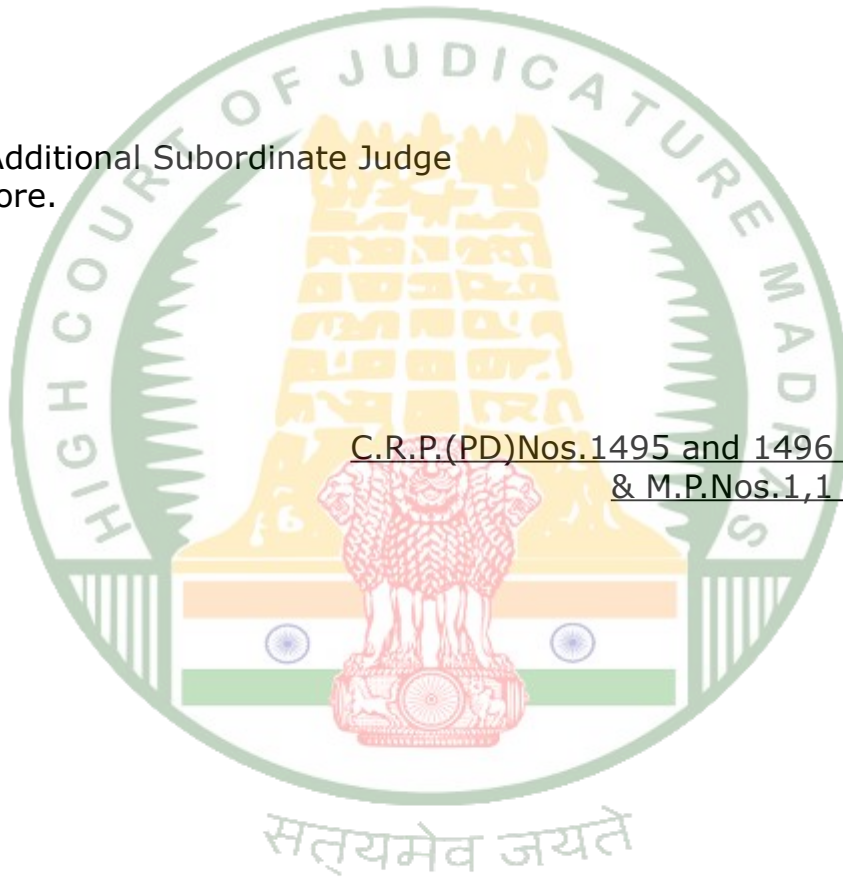
Index : Yes/No
dm/kj

V.M.VELUMANI, J.

dm/Kj

To

The III Additional Subordinate Judge
Coimbatore.



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