

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.1612 and 1613 of 2017
and C.M.P.No.7617 of 2017 in CRP PD No.1612 of 2017

K. Rukmani

.. Petitioner
in both the C.R.P.(PD)

Vs.

K.S. Ponnusamy Gounder (Died)

1. Rathinam
2. Shanmugam
3. Janaki
4. Suseela
5. Usharani

.. Respondents
in both the C.R.P.(PD)

COMMON PRAYER: Civil Revision Petitions is filed under Article 227 of the Constitution of India to set aside the fair order and decretal order 15.2.2017 passed in I.A.Nos.14 & 15/2017 in O.S.No.330/2007 by the Additional District Judge, Erode District at Bhavani, respectively.

For Petitioner : M/s. A.S. Baalaji

COMMON ORDER

These Civil Revision Petitions have been filed against the fair and final order dated 15.2.2017 passed in I.A.Nos.14 & 15 of 2017 in O.S.No.330 of 2007 on the file of the Additional District Judge,

Erode District at Bhavani, respectively.

2. The petitioner is the defendant and respondents are the plaintiffs in O.S.No.330 of 2007.

3. Originally, one K.S.Ponnusamy Gounder filed the suit for recovery of money based on two promissory notes. The suit was decreed on 26.11.2008. Against the said judgment and decree, the petitioner filed AS.No.338 of 2010 before this Court. This Court, by judgment and decree dated 04.10.2012, set aside the judgement of the trial Court and allowed the appeal and remanded the suit to the trial Court. This Court held that it is open to the petitioner to recall P.W.1, the original plaintiff and confront him with Exs.B1 to B9 and if he denies the signature, it is open for the petitioner to send the documents Exs.B1 to B9 to get an opinion of the handwriting expert and directed the trial Court to dispose the suit within four months from the date of receipt of a copy of the order. After remand, the petitioner did not take any steps to recall P.W.1 and trial could not be completed within the time fixed by this Court. In the meanwhile, the original plaintiff died in the month of August 2013, and his legal heirs/respondents herein were

impleaded as plaintiffs in the suit. In these circumstances, the petitioner filed a petition in IA. No.35 of 2016 to appoint an Advocate Commissioner to take Exs.B1 to B9 along with plaint, vakalath, deposition of chief affidavit and cross examination of P.W.1, and the alleged signature of P.W.1 find place in any other registered document/deeds during the period around 1999, 2000 and 2001 and that can be produced by the plaintiff K.S.Ponnusamy Gounder for rebuttal evidence against Exs.B1 to B9 to get an opinion of the expert. The said application was dismissed.

4. Subsequently, the petitioner filed two applications in IA.Nos.14 and 15 of 2017, to reopen the suit and recall petitioner for further defence side evidence to adduce some important documents such as decree, judgment, plaint, written statement and the agreement for the sale of property in OS.No.95 of 2003. According to the petitioner, as per the judgment of this Court in AS No.338 of 2010, those documents are necessary to prove her Case.

5. The respondents filed counter affidavits in the aforesaid applications and opposed.

6. The learned Judge, considering the averments in the affidavit counter affidavit and judgment of this Court in AS No.338 of 2010, dismissed both the applications holding that there was no direction by this Court to reopen and recall petitioner and the documents sought to be marked are not relevant to the facts in the present suit. The petitioner has not pleaded this issue in the written statement.

7. Against the said order of dismissal dated 15.02.2017 in IA Nos.14 and 15 of 2017, present two Civil Revision Petitions are filed.

8. Heard the learned counsel for the petitioner and perused the materials available on record.

9. The grievance of the petitioner is that documents sought to be marked are necessary to decide the issue in the suit. The contention of the learned counsel for the petitioner that as per the direction of this Court, the petitioner has to be recalled and documents are to be marked, which are necessary to prove their case. From the impugned order of the learned Judge, it is seen

that this Court directed the P.W.1 to be recalled and confronted with Ex.B1 to B9 and if P.W.1 denies those documents, then to obtain expert opinion. After remand, the petitioner did not take any steps to recall P.W.1 to confront with documents of Ex.B1 to B9.

10. Subsequently, P.W.1 died in the month of August 2013. As far as the document sought to be marked is concerned, the learned Judge has held that the petitioner has not pleaded anything about those documents in the written statement and those documents are not relevant to decide the issue in the suit. The learned Judge has taken note of the fact that petitioner filed IA No.35 of 2016 for appointment of an Advocate Commissioner to take Ex.B1 to B9 along with plaint, vakalath, deposition of Chief affidavit and Cross examination of P.W.1, and the alleged signature of P.W.1 and the said application was dismissed. After dismissal of the said application, petitioner represented that she will argue the matter afresh to dispose of the suit on merits after appreciating the evidence on record.

11. For the above reasons, the learned Judge has held that

the application filed by the petitioner is not necessary to decide the issue in the present suit.

1.

V.M.VELUMANI, J.

jv

12. The learned Judge, considering all the materials available on record, dismissed the applications by giving cogent and valid reasons. In these circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 15.02.2017.

13. In the result, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

02.06.2017

Index : Yes
jv

To

The Additional District Judge,
Erode District at Bhavani.

C.R.P.(PD)Nos.1612 and 1613 of 2017
and C.M.P.No.7617 of 2017
<http://www.judis.nic.in>