

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2017

C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(P.D).No.172 of 2014
and M.P.No.1 of 2014 and
C.R.P.(P.D).No.173 of 2014

Vinod Sampatraj Jain @ S.Vinod kUmar .. Petitioner in both C.R.Ps

-Vs.-

1. Jayantilal Jain

2. Leela J.Jain .. Respondents in both C.R.Ps

Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decretal order dated 05.10.2013 made in I.A.Nos.846 of 2013 and 847 of 2013 in O.S.No.218 of 2007 on the file of the IV Additional District and Sessions Judge, Coimbatore.

For petitioner
in both C.R.Ps

... Mr.S.Mukunth for
M/s.Sarvabhauman Associates

For Respondents
in both C.R.Ps

... Mr.S.Muthuraman

C O M M O N O R D E R

The Civil Revision Petitions are filed by the plaintiff challenging the orders allowing the applications to reopen and recall the applications filed by the defendants in I.A.Nos.846 and 847 of 2013 respectively.

2. The suit is filed by the plaintiff for declaration that the settlement deeds executed by the first defendant in favour of the second defendant, is not true, valid and binding on the plaintiff.

3. The present application was taken out by the defendants to recall D.W.1 for the purpose of marking the original documents mentioned in the affidavit and letting in further evidence on their side. It is stated in the affidavit that by oversight, the plaintiff did not mark the said documents before the Court. However, that was opposed by the plaintiff stating that these documents were available with the defendants even during the trial proceedings and they have not marked it deliberately even after the notice was issued on them to

produce the same into Court. The learned trial Judge has allowed those applications. Aggrieved by the same, the plaintiff has come up with the above revision petitions challenging the said orders, contending that the trial Judge has exceeded his jurisdiction in allowing re-opening and re-calling the applications without considering the fact that the same are filed at the fag end of the proceedings.

4. It is stated that there is no truth in the affidavit filed in support of those applications and the applications were taken out in a very casual manner. It is also pointed out by the learned counsel for the petitioner that even during the cross examination of P.W.1, no attempts were made to mark the said documents. Therefore, it is vehemently contended by the learned counsel for the petitioner that these applications ought not to have been allowed and the same has to be set aside.

5. In the petition filed in support of the affidavit, the respondents have sought for re-opening and re-calling D.W.1 for the

purpose of marking the original documents mentioned in the affidavit and letting further evidence on their side. Admittedly, the plaintiff has already produced the certified registration copies of these documents. The defendants had not produced the original, despite notice being sent. They have also waited till the completion of trial and filed the applications to re-open and re-call. Though re-call was sought under Order 18 Rule 17 C.P.C, it has to be sparingly used and it cannot be allowed for the sake of asking. In this case, the documents which are the certified copies were already before the Court. It is only the original documents that are now sought to be brought in by the defendants. Therefore, the learned trial Judge has held that it would not be prejudicial to the plaintiff, if these documents are received in evidence. Admittedly, the question of filling the lacunae will not arise in this case, as these documents are already on record in a certified form. But, the delay caused by the defendants would certainly prejudice the plaintiff. Besides, the question of letting in further evidence, may not arise, as sufficient examination has been done when the certified copies were marked by the plaintiff. Therefore, it would

be suffice that the case may be re-opened and D.W.1 may be re-called only for the purpose of marking the original documents mentioned in the affidavit. The parties will not be allowed to let in further evidence on their side in this regard.

6. With the above specified direction, in modification of the order passed by the learned trial Judge, the Civil Revision Petitions are partly allowed. However, the objections that are raised by the plaintiff may be recorded. No costs. Consequently, connected miscellaneous petition is closed.

04.01.2017

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To

The IV Additional District and Sessions Judge,
Coimbatore.

PUSHPA SATHYANARAYANA.J

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