

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2017

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THE HON'BLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(PD) Nos.1964 & 1965 of 2017
and CMP.No.9501 of 2017 in CRP (PD) No.1964 of 2017

K.Krishnamurthy ...Petitioner in both CRPs

Vs

K.Shanmugasundaram ...Respondent in both CRPs

Common Prayer : Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 18.01.2017 made in I.A.No.842 of 2016 and I.A.No.843 of 2016 in O.S.No.197 of 2005 on the file of the learned I Additional Sub Court (Full in charge, Principal Sub Court), Erode.

For Petitioner : Mr. N.Manokaran

COMMON ORDER

These Civil Revision Petitions have been filed to set aside the fair and decretal order dated 18.01.2017 made in I.A.No.842 of 2016 and I.A.No.843 of 2016 in O.S.No.197 of 2005 on the file of I Additional Sub Court, Erode.

2. The petitioner is the second defendant and respondent is the plaintiff in O.S.No.197 of 2005 on the file of the learned Principal Subordinate Judge, Erode . The respondent filed the suit for partition

and separate possession against the petitioner and other defendants. The petitioner and other defendants filed written statement. Pending suit, the petitioner also filed additional written statement on 12.11.2009 and is contesting the suit.

3. The respondent was examined as P.W.1 in chief in the year 2006. The petitioner and other defendants took number of adjournments to cross-examine the respondent/P.W.1 and completed the cross-examination only on 11.03.2010. Subsequently, the suit was posted for defendant's side evidence. The petitioner filed proof affidavit on 23.03.2016, and filed an application for filing additional written statement, which was allowed. Thereafter, the petitioner filed additional written statement and the respondent also filed the reply statement. The petitioner was examined as D.W.1 with regard to the averments in the reply statement.

4. It is contended by the petitioner that the respondent/P.W.1 did not enter into the witness box to speak about the averments made in the reply statement and therefore, he must be re-called and a detailed cross-examination of P.W.1 is required. But, at the said stage, the respondent's side evidence was closed. Hence, the petitioner filed two applications in I.A.No. 842 of 2016 and I.A.No.843 of 2016 to re-open and recall P.W.1 for further cross-examination with regard to the

averments made in the reply statement. The learned trial Judge, on considering the averments made by the parties, has dismissed the applications in I.A.No.842 of 2016 and I.A.No.843 of 2016, vide order dated 18.01.2017.

5. Against the said order of dismissal dated 18.01.2017, passed by the learned I Additional Sub Judge, the present civil revision petitions have been filed.

6. Heard the learned counsel appearing for the petitioner and perused the materials available on records.

7. From the materials available on record, it is seen that in the reply statement, the respondent has stated about the earlier suit proceedings filed by the petitioner and also the judgment passed by the trial Court and Appellate Court in A.S.Nos.22 and 23 of 2012 on the file of the I Additional Subordinate Court, Erode. This fact was admitted by the petitioner and the petitioner was cross-examined on the averments made in the reply statement.

8. In view of the admitted fact about the judgment of the trial Court, and the first Appellate Court, and the failure on the part of the petitioner to comply with the mandatory relief granted by I Appellate

Court in A.S.Nos.22 & 23 of 2012, the two applications filed in I.A.Nos.842 of 2016 and 843 of 2016 to re-open and re-call P.W.1 for further cross-examination, would only prove the intention of the petitioner to drag on the proceedings, as alleged by the respondent. Hence, in the interest of justice, the relief sought for by the petitioner in the said applications is not acceptable. The learned I Additional Sub Judge, Erode has rightly dismissed the applications in I.A.Nos.842 of 2016 and 843 of 2016 by giving cogent and valid reasons. There is no infirmity or illegality in the order dated 18.01.2017 passed by the learned I Additional Sub Judge, Erode in the aforesaid applications warranting interference by this Court.

9. In the result, the civil revision petitions are devoid of merits and hence the same are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

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Speaking order / Non Speaking
Index : Yes / No
Internet : Yes / No

To:
The I Additional Subordinate Judge,
Erode.



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