

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.203 and 204 of 2014
and M.P.No.1 of 2014

1.Achiammal
2.Subramaniam

.. Petitioners
in both CRPs

Vs.

Kandasamy

.. Respondent
in both CRPs

PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the fair and decretal order dated 30.09.2013 passed in I.A.Nos.774 and 775 of 2013 in O.S.No.350 of 2007 on the file of the District Munsif Court, Palladam.

For Petitioners : Mr.K.Govi Ganesan

For Respondent : No Appearance

COMMON ORDER

The Civil Revision Petitions are filed against the fair and decretal order dated 30.09.2013 passed in I.A.Nos.774 and 775 of

2013 in O.S.No.350 of 2007 on the file of the District Munsif Court, Palladam.

2. The petitioners are the defendants and respondent is the plaintiff in O.S.No.350 of 2017 on the file of the District Munsif Court, Palladam. The respondent filed the above suit for partition against the petitioners. The petitioners filed written statement on 28.08.2008 and amended copy of the written statement on 05.03.2010. The respondent filed reply statement on 18.03.2010. Both the petitioners and respondent let in evidence and closed their side and filed written arguments. When the suit is posted for arguments, the respondent filed two applications in I.A.No.774 of 2013 to recall D.W.1 and I.A.No.775 of 2013 to reopen the case.

3. According to the respondent, some important questions were omitted to be asked during the cross examination of D.W.1.

4. The second petitioner filed counter affidavit and the same was adopted by first petitioner and opposed the said application.

5. The learned Judge, considering all the averments made in the affidavit, counter affidavit, Order XVIII Rule 17 of C.P.C. and judgment of the Hon'ble Apex Court, allowed both the applications and awarded Rs.1,000/- as costs to be paid to the petitioners.

6. Against the said order dated 30.09.2013 passed in I.A.Nos.774 and 775 of 2013, the present two Civil Revision Petitions are filed by the petitioners.

7. Heard the learned counsel for the petitioners and perused the materials available on record.

8. As per the Order XVIII Rule 17 of C.P.C., the Court has discretionary power to recall any witness on its own motion or on application by a party. It is a discretionary power, which has to be exercised judicially and sparingly only in a fit case. The present suit is for partition.

9. The learned Judge, considering the relief sought for in the suit and materials available on record, exercised his discretionary power and allowed both the two applications. The learned Judge

also compensated the petitioners for the inconvenience caused to them. The learned Judge has applied the ratio in the judgment reported in **Civil Appeal Nos.2795-2796 of 2011 (arising out of SLP [C] Nos.18211-18212 of 2010) K.K.Velusamy vs. N.Palanisamy, 30 March, 2011** and allowed both the applications. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 30.09.2013. It is made clear that the petitioners can re-examine D.W.1 after cross examination by the respondent and also let in further evidence, if they so desire or advised.

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

17.11.2017

Index : Yes/No
dm/kj

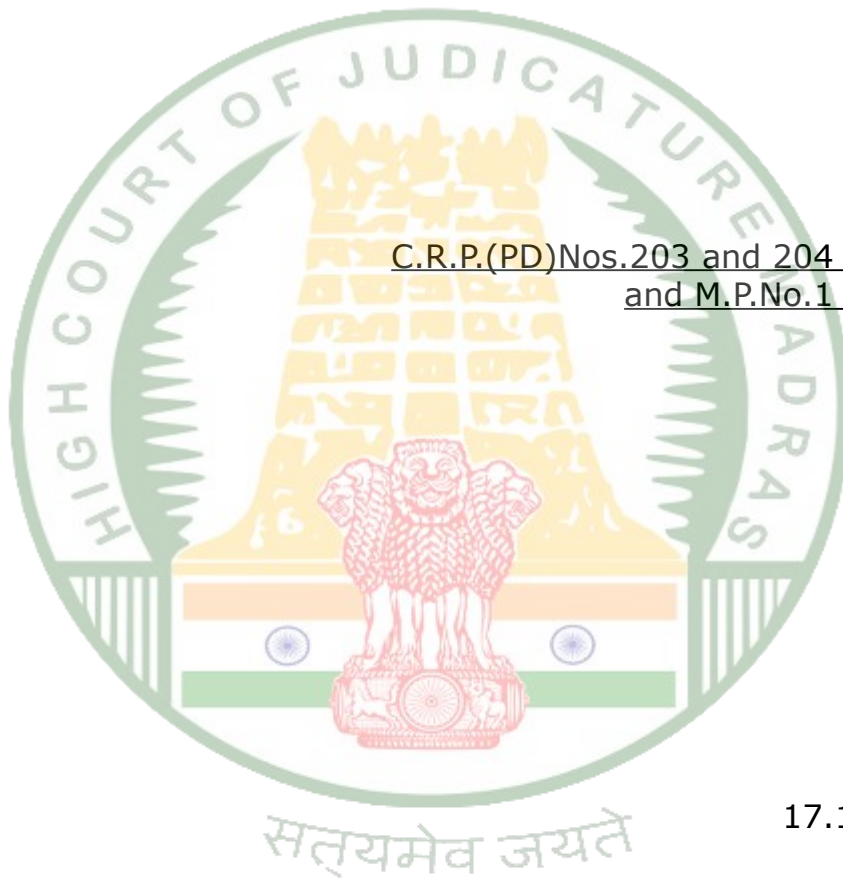
To

The District Munsif
Palladam.

WEB COPY

V.M.VELUMANI, J.

dm/kj



C.R.P.(PD)Nos.203 and 204 of 2014
and M.P.No.1 of 2014

17.11.2017

WEB COPY