

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2017

CORAM

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**

C.R.P.(PD).Nos.3441 & 3442 of 2017  
and CMP Nos. 15960 & 15961 of 2017

R.Madan Chand

... Petitioner  
in both CRP's

Vs.

1. R.Premchand
2. Chandra Bai
3. Kamala Devi
4. R.Narendra Kumar

... Respondents  
in both CRPs

**Prayer in C.R.P(PD) No. 3441 of 2017:** Civil Revision Petition is filed under Article 227 of the Constitution of India against the Order and Decretal order dated 09.08.2017 in I.A.No.6965 of 2017 in O.S.No.1084 of 2008, on the file of the XVIII Assistant Judge, City Civil Court, Chennai.

**Prayer in C.R.P (PD) No. 3442 of 2017:** Civil Revision Petition is filed under Article 227 of the Constitution of India against the Order and Decretal order dated 09.08.2017 made in I.A.No.6966 of 2017 in O.S.No.1084 of 2008 on the file of the XVIII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.V.Ramana Reddy  
in both CRP's

For Respondents : Mr.R.Thiagarajan for R4  
in both CRP's

### **COMMON O R D E R**

The petitioner has filed the suit in O.S.No.1084 of 2008 claiming 1/5th share out of 1/3rd share of his late father, G.Rathan Chand. According to the plaintiff, the plaintiff and his brother are in possession of the suit property. The fourth respondent / fourth defendant has filed written statement to the effect that the suit property is the absolute property of the said Rathan Chand and during his life time, he settled the same in favour of the fourth respondent. Encumbrance certificate shows A schedule property belongs to Madanchand / petitioner, Rathan Chand / father of the petitioner and the fourth defendant / fourth respondent. During the cross examination of DW1, when the encumbrance certificate was shown to him, he denied the same. As per the said encumbrance certificate, Rathanchand / father of the plaintiff is not the absolute owner of the property. Therefore, the plaintiff filed an application to reopen and recall PW1 for the purpose of marking documents Ex.P9 and Ex.P10. Thereafter, the fourth defendant / fourth respondent

filed counter affidavit and opposed the application filed by the plaintiff / petitioner by stating that there is no reason set out in the affidavit for not producing the said documents at the time of filing suit. The court below has erroneously dismissed the application. Therefore, the petitioner has filed the present Civil Revision Petition before this Court.

2. According to the learned counsel for the petitioner, the delay is only on the part of the respondents / defendants. During the cross examination of DW1, he denied Encumbrance certificate produced before him and hence it was not marked. Since the petitioner's side evidence was closed, the petitioner / plaintiff has filed the present application. The court below considering the submission made by both sides, dismissed the said application by holding that the petitioner has filed the suit as early as in the year 2008 and there is no reason stated in the affidavit for non production of the said documents at the time of filing suit or thereafter. Further it was held that after the cross examination of DW1, the present application has been filed and hence the instant application was dismissed by the trial court. Therefore, the petitioner has filed the present Civil Revision Petition before this

Court.

3. The learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of ***K.K.Velusamy Vs. N.Palanisamy*** reported in **(2011) 22 SCC p 275** wherein this Court has held that discretion can also be extended after the evidence has been closed or argument has been heard. Hence, the court below has rightly dismissed the application.

4. In the light of the decision of this Court in the case of ***Vadiraj Nagappa (through Legal Heirs) Vs. Sharad Chandra Prabhakar*** reported in **(2009) 4 SCC p 410**, wherein this Court has held "*under Order 18 Rule 17 of the Code of Civil Procedure, has to be sparingly exercised in appropriate cases and not as general rule merely on the ground that recall and re-examination would not cause any prejudice to the parties. Moreover, such power cannot be invoked to fill up the lacuna in the evidence of witness which has already been recorded*".

5. On the facts and circumstances of the case, since the plaintiff's evidence is over and DW1 has been examined, at this

stage, filing an application, to mark encumbrance certificate without stating any reason in the affidavit, cannot be accepted and hence the same is unsustainable. Therefore, there is no warrant to interfere with the order passed by the trial court in I.A.No.6965 of 2017.

6. In view of the above and in the light of the decision cited supra, the Civil Revision Petition in CRP.No.3441 of 2017 fails and the same is dismissed.

7. Since the Revision Petition in CRP.No.3441 of 2017 is dismissed, the CRP.No.3442 of 2017 against the order passed in I.A.No.6966 of 2017 to recall PW1 for further chief examination is also dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

04.10.2017

Speaking/Non-speaking order

Index : Yes/No

Internet: Yes/No

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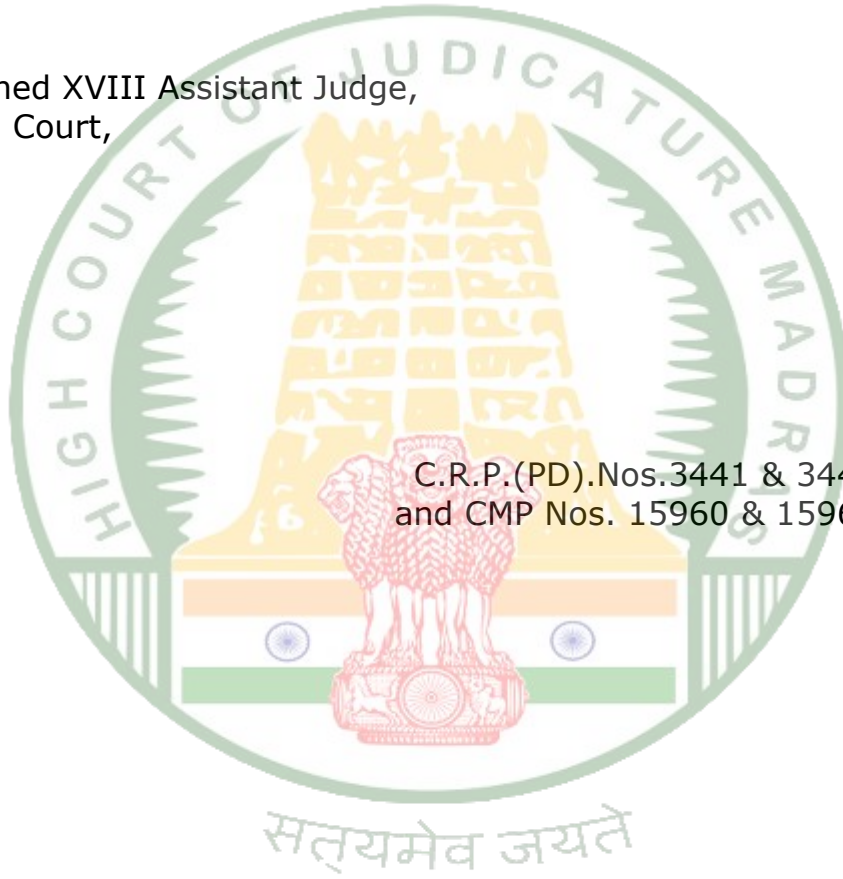
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**D. KRISHNAKUMAR J.**

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To

The learned XVIII Assistant Judge,  
City Civil Court,  
Chennai.



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