

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).Nos.932 to 934 of 2011
& M.P.No.1 of 2010

Abdul Khader @ Chinnathambi Maraicair .. Petitioner in
all C.R.Ps

Vs.

1.U.Basheer Ahmed
2.Sankaranarayanan @ Sepaiya .. Respondents in
all C.R.Ps'

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal orders dated 18.02.2011 made in I.A.Nos.100 to 102 of 2011 in O.S.No.131 of 2007 on the file of the learned District Munsif, Nagapattinam.

For Petitioner : Mr.S.Sathiachandran

For R1 : Mr.Anand Venkatesh

For R2 : No Appearance

COMMON O R D E R

These civil revision petitions are filed against the fair and decretal orders dated 18.02.2011 made in I.A.Nos.100 to 102 of

2011 in O.S.No.131 of 2007 on the file of the learned District Munsif, Nagapattinam.

2. The issues involved in all the civil revision petitions are one and the same. Therefore, disposed of by this common order.

3. The petitioner is the second defendant, first respondent is the plaintiff and second respondent is the first defendant in O.S.No.131 of 2007 on the file of the learned District Munsif, Nagapattinam. The first respondent filed the said suit for declaration and recovery of possession. The petitioner filed written statement on 28.09.2007 and is contesting the suit. Both the petitioner and respondents let in evidence and closed their side. When the suit was posted for arguments, the first respondent filed three application in I.A.Nos.100 to 102 of 2011 to reopen the case; recall PW1 and DW3 and also examine the District Registrar, Nagapattinam as witness in the suit and permission to mark the documents. According to the first respondent, the document mentioned in the petition could not be filed earlier as the same was traced only recently and obtained through Right to Information Act. These documents are necessary to decide the issue in the suit and therefore, he has filed the above three applications.

4. The petitioner filed detailed counter affidavit, opposing the applications and contended that the documents were available with the first respondent, before commencement of trial. The first respondent has not given any valid reason for not filing the documents earlier. The petitioner is 80 years old and only to drag on the proceedings, the first respondent has filed the three applications and prayed for dismissal of the same.

5. The learned Judge, by the order dated 18.02.2011, held that all the documents now sought to be marked are prior to commencement of trial and allowed the application in I.A.No.100 of 2011 filed to reopen the case, on payment of a cost of Rs.500/-; partly allowed the application in I.A.Nos.101 of 2011 to recall PW1 and to mark the documents, on payment of a cost of Rs.500/- and in I.A.No.102 of 2011, permission to mark the document was allowed without cost.

6. Against the said orders dated 18.02.2011, made in I.A.Nos.100 to 102 of 2011 in O.S.No.131 of 2007, the present three civil revisions are filed by the petitioner.

7. Heard the learned counsel appearing for the petitioner and first respondent. Though notice has been served on the second respondent and his name is printed in the cause list, there is no representation either in person or through counsel.

8. From the materials on record, it is seen that the first respondent, after commencement of trial and conclusion of evidence let in by both the parties, have come out with the present three applications. According to the first respondent, the documents were not available at the time of filing of the suit and were traced and obtained through Right to Information Act recently and hence it could not be produced and marked when the first respondent let in evidence. This contentions are without any merits. From the counter affidavit filed by the petitioner, it is seen that the first respondent has taken four months time to let in evidence and examined 6 witnesses and closed his evidence on 06.12.2010. The learned Judge took note of the fact that all the documents are prior to commencement of trial. The first respondent has not stated that in spite of his due diligence, he could not have filed the documents earlier. The Court has power to recall any evidence and permit the

party to file and mark the document. This is a discretionary power which has to be exercised judicially. The Court must be satisfied that for a valid reason, the party could not have filed earlier, even though those documents are with them before they closed their side evidence. A party can not claim reopening, recalling the evidence and permission to file additional documents as a matter of right. The learned Judge failed to exercise the power properly conferred on him and committed an irregularity in allowing all the three applications.

9. In view of the same, all the three civil revision petitions are allowed by setting aside the orders dated 18.02.2011 made in I.A.Nos.100 to 102 of 2011. No costs. Consequently, connected miscellaneous petition is closed.

Index: Yes/No
gsa

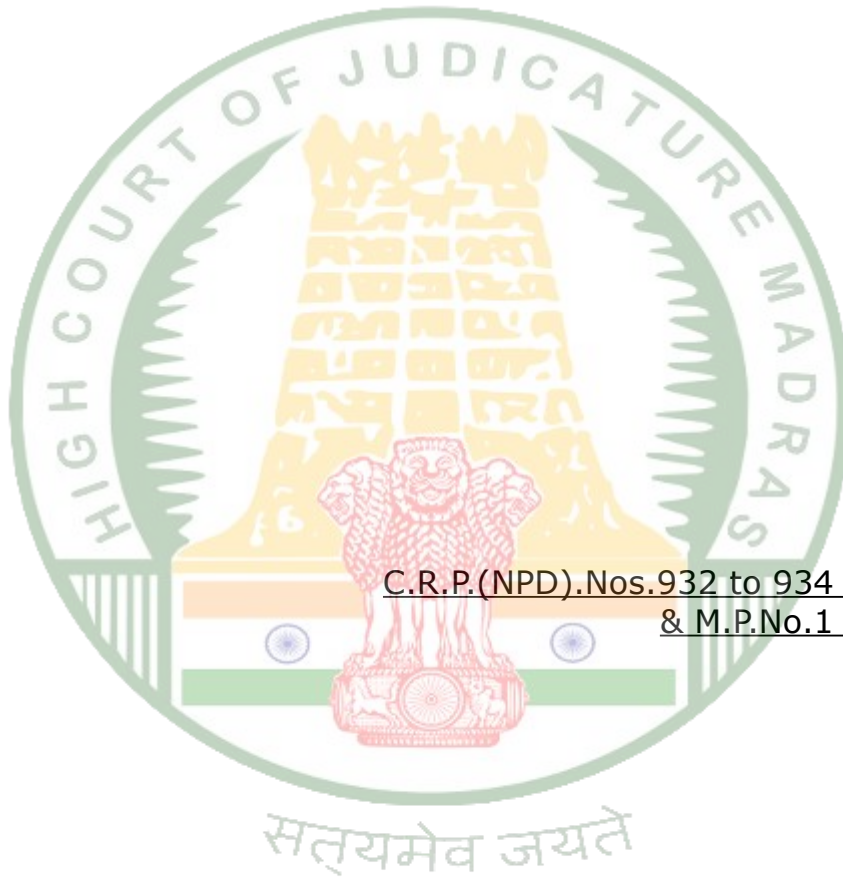
To
The District Munsif,
Nagapattinam.

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V.M.VELUMANI, J.

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