

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.4034 & 4035 of 2016
and C.M.P.No.20352 of 2016 in CRP No.4034/16
&
CRP (PD) No.104 of 2017
and C.M.P.No.496 of 2017

1. C.Chandiraprakash
2. C.Dhakshinamoorthy
3. S.Mani
4. R.Manickam
5. K.S.Sivamalai
6. R.A.Jaganathan
7. B.Pathamachand Jain

.. Petitioners
in all the petitions

Vs.

1. Sumathi
2. Sathyavathi
3. Karthikeyan
4. Alli
5. Banumathi
6. Balasubramaniam

.. Respondents
in all the petitions

PRAYER (in CRP PD Nos.4034 & 4035/16): Civil Revision Petitions filed under Article 227 of the Constitution of India, against the Order and decretal order made by the Principal District Munsif, Salem on 14.11.2016 in I.A.No.1236 and 1237 of 2016 in O.S.No.665 of 2007 respectively.

PRAYER (in CRP PD No.104/2017): To revise the suo-motu proceedings dated 30.11.2016 made in O.S.No.665 of 2007 on the file of the Principal District Munsif Court, Salem.

For Petitioners : Mr.Jothi
for Mr.M.C.Govindan

For RR 1 & 2 : Mr.N.Anand Venkatesh

COMMON ORDER

CRP PD Nos.4034 and 4035 of 2016:

These Civil Revision Petitions have been filed against against the Order and decretal order made by the Principal District Munsif, Salem on 14.11.2016 in I.A.No.1236 and 1237 of 2016 in O.S.No.665 of 2007 respectively.

2. The petitioners are the plaintiffs and the respondents are the defendants in OS No.665 of 2007. Against the common order dated 14.11.2016 dismissing the IA Nos.1236 and 1237 of 2016 filed by the petitioners/plaintiffs for reopening the evidence of P.W.1 and to mark the documents mentioned in the petition, CRP PD Nos.4034 and 4035 of 2017 have been filed. The suit is filed by the

petitioners for declaration to declare that the sale deed dated 15.05.2002 executed by one Raja Manickam in favour of respondents 1 and 2 is null and void and for consequential relief of permanent injunction.

3. Originally, the respondents 1 and 2 were set *ex-parte* and petitioners and other respondents let in evidence. At that stage, the respondents 1 and 2 filed IA Nos.1227 and 1228 of 2015 to reopen and recall P.W.1 for the purpose of cross examination. Both the applications were dismissed by the trial Court. Against which the respondents 1 and 2 filed CRP Nos.237 and 238 of 2016, challenging the said order of the dismissal. This Court allowed both the Civil Revision Petitions permitting the petitioners to file additional proof affidavit before cross examination of P.W.1 by the respondents 1 and 2.

4. After P.W.1 was recalled and cross examined by respondents 1 and 2, the petitioners filed IA Nos.189, 190 and 191 of 2016 to reopen, recall and produce the documents. All the above three applications were allowed by the trial Court on 04.02.2016. The petitioners filed additional proof affidavit of P.W.1 and marked

two documents Ex.A14 and A15. After evidence was let in on behalf of the respondents 1 and 2, petitioners again filed present applications for reopening of evidence of P.W.1 and to mark the documents.

5. The respondents 1 and 2 filed counter affidavit and opposed the same.

6. The learned Judge, considering the order of this Court dated 28.01.2016 in CRP Nos.237 and 238 of 2016 dismissed IA.Nos.1227 and 1228 of 2015. Against the said common order dated 14.11.2016, these two CRP Nos.4034 and 4035 of 2016 are filed.

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

8. From the records, it is seen that respondents 1 and 2 were set *ex-parte*. Subsequently, the said order was set aside. After trial commenced and closure of evidence on behalf of the petitioners and respondents 3 to 6, the respondents 1 and 2 filed two applications

for reopening and recalling P.W.1 for cross examination. The trial Court dismissed the said applications and this Court allowed the two applications in Civil Revision Petition Nos.237 and 238 of 2016 filed by the respondents. After the order of this Court, P.W.1 filed additional proof affidavit and he was cross examined. On earlier occasion, the petitioners filed three applications in IA Nos.189, 190 and 191 of 2016 for reopening, recalling of P.W.1 and to mark the documents. These applications were allowed on 04.02.2016 and the petitioners marked two documents Ex.A14 and A15. Again petitioners filed these applications to recall P.W.1 and to mark certain documents namely the certified copies of the exhibits marked in OS.No.51 of 2002 which was decreed on 11.11.2003. The petitioners have not filed these documents along with plaint. The petitioners have not given any reason for not filing these documents along with plaint or when P.W.1 was examined at the first instance or when P.W.1 was again examined and cross examined based on the order of this Court in CRP Nos.237 and 238 of 2016 or when P.W.1 was recalled and examined and cross examined or when IA Nos.189, 190 and 191 of 2016 were allowed.

9. When the parties seek to produce and mark the documents,

after commencement of trial, the said party must give valid and acceptable reasons to show that inspite of their best efforts, they could not produce those documents at the earliest.

10. In the present case, after chief examination and cross examination by respondents 3 to 6 and again after being recalled twice, examined and cross examined, the petitioners have not produced the documents, now sought to be produced and marked. The reason given by the petitioners is that due to inadvertence they have not produced these documents, is not an acceptable and valid reason to receive and mark the documents after commencement of trial.

11. In the result, both the Civil Revision Petitions Nos. 4034 and 4035 of 2016 are dismissed.

CRP PD No.104 of 2017:

12. As far Civil Revision Petition No.104 of 2017 is concerned, the respondents 1 and 2 filed application under Section 151 C.P.C. on 30.11.2016. The learned Judge, after perusal of records, refused the petition by the same order and the learned Judge suo-

motu reopened the evidence on behalf of the respondents 1 and 2 and posted the case to 06.12.2016 as last chance.

13. The petitioners filed present CRP No.104 of 2017 challenging the said order.

14. The learned counsel appearing for the petitioners submitted that trial Court has suo-motu reopened the case and directed the party to give evidence. The Court has power under Order XIV and Rule 14 CPC to examine a person including the parties to the suit on its own motion. The said provision reads as follows:

"R. 14. Court may of its own accord summon as witnesses strangers to suit - Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary [to examine any person, including a party to the suit,] and not called as a witness by a party to the suit, the Court may, of its own motion,

cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document".

15. It is evident that the Court can suo-motu call upon any person including a party to the suit at any time to give evidence if evidence of such witness is necessary. In the present case, the learned Judge has stated that D1 and D2 have not adduced any evidence and suo-motu reopened the suit on 30.11.2016 for evidence on their side. The said reason is not valid. The learned Judge has committed an error in suo-motu reopening the suit and directing the respondents 1 and 2 to adduce evidence without assigning any reason in compliance of Order XIV Rule 14 of C.P.C. The learned Judge has not exercised his power as conferred under Order XVI Rule 14 properly.

16. In the result, order dated 30.11.2016 is set aside and the CRP No.104 of 2017 is allowed.

17. The learned Judge is directed to consider the issue whether the Court can suo-motu direct the respondents 1 and 2 to let in evidence as per the Order XVI Rule 14 C.P.C on merits and pass orders within 3 weeks from the date of receipt of a copy of this order, after giving an opportunity to the petitioners and respondents 1 and 2 to put forth their case and after considering the issue, if the learned Judge comes to the conclusion that the evidence in the suit has to be reopened, give an opportunity to the respondents 1 and 2 to let in evidence and the evidence already taken on behalf of the respondents 1 and 2 shall be considered.

18. In the result, Civil Revision Petitions Nos.4034 and 4035 of 2016 are dismissed and Civil Revision Petition No.104 of 2017 is allowed. No costs. The connected miscellaneous petitions are closed.

07.06.2017

Index : Yes
speaking order/non speaking order
jv

V.M.VELUMANI, J.

jv

To
The Principal District Munsif,
Salem

C.R.P.(PD)Nos.4034 & 4035 of 2016
andCRP (PD) No.104 of 2017

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