

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)Nos.3695 & 3696 of 2013
and
M.P.No.1 of 2013**

1.Jaya
2.Subashini
3.Gopi @ Gopinath .. Petitioners in both the CRPs

Vs.

Sundariammal ..Respondent in both the CRPs

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and final order in I.A.No.152 of 2013 and I.A.No.90 of 2013 in O.S.No.24 of 2009, dated 25.06.2013, on the file of the Principal District Munsif Court, Ambur, Vellore District, dated 11.07.2012.

WEB COPY

(In both the CRPs)

For Petitioners : Mr.Pa.Sudesh Kumar

For Respondent : No Appearance

COMMON ORDER

The petitioners in both the Civil Revision Petitions are the defendants in O.S.No.24 of 2009 on the file of the learned Principal District Munsif Court, Ambur, Vellore District which was filed by the respondent herein, for the relief of declaration, recovery of possession.

2.The petitioners herein filed CRP.No.3695 of 2013 as against the dismissal order of an application filed in I.A.No.152 of 2013 dated 25.06.2013 to reopen and recall PWs-1 and 2.

3.The petitioners herein filed CRP.No.3696 of 2013 as against the dismissal order of an application filed in I.A.No.90 of 2013 to receive additional written statement filed under Order 8, Rule 9 of CPC.

4.According to the revision petitioners/defendants originally the above suit filed by the respondent herein was disposed, against which an appeal was filed. The appellate Court has remanded the Appeal back to the Trial Court for fresh disposal. Since, the

defendants/revision petitioners wanted to put certain questions in respect of certain important documents to the PW1 and PW2, therefore they filed an application in I.A.No.152 of 2013 under Order 18, Rule 17 of CPC to reopen and recall the suit for the purpose of cross examination of PW1 and PW2.

5. Apart from that the revision petitioners had also filed an application in I.A.No.90 of 2013 to receive additional written statement under Order 8, Rule 9 of CPC. It is stated by the revision petitioners that the marriage date and place of the 1st petitioner and Srinivasha Bhagathar and out of the said marriage petitioners 2 and 3 herein were born to them and their School certificate, birth certificate have not been stated in the written statement. The above said facts have been pleaded in the additional written statement and therefore they filed the above application to receive the additional written statement.

6. The Trial Court has taken up both the above application for enquiry and by order dated 25.06.2013 dismissed both the application by separate order.

7. Feeling aggrieved over the said dismissal orders, the revision

petitioners filed the above Civil Revision Petitions. As both Civil Revision Petitions are arising out of the suit in O.S.No.24 of 2009 and parties in the above Civil Revision Petitions are one and the same, hence both these Civil Revision Petitions are disposed by this common order.

8.I heard Mr.Pa.Sudesh Kumar, learned counsel for the petitioners and perused the entire materials available on record. No representation on behalf of the respondent.

9.The perusal of impugned orders disclose that the trial Court dismissed the petition to receive additional written statement by holding that the 1st petitioner and the respondent herein are claiming to be the wife of Srinivasha Bhagavathar and who is the legally wedded wife has to be decided, hence the birth certificate of petitioners 2 and 3 herein and whether they are born to Srinivasa Bhagavathar are not necessary. In the considered opinion of this Court, the said finding of the Trial Court is not legally sustainable. It is the duty of the 1st petitioner to prove that the petitioners 2 and 3 herein are born to Srinivasa Bhagavathar and for that necessary pleadings and documents are necessary. Hence obviously the

petitioners herein filed additional written statement by pleading necessary facts which are left out and the same has to be received. The trial Court shall adopt liberal approach in deciding the application to receive the additional written statement.

10. In so far as I.A.No.152 of 2013 concern, the Trial Court dismissed the application to recall and reopen on the ground that the petitioner herein failed to plead in the affidavit that in respect of what document they wanted to put question to PWs1 and 2. Since the petitioners failed to specifically plead about the questions to be asked to PWs-1 and 2 in respects of specific documents hence application filed by the petitioner under Order 18, Rule 17 of CPC was dismissed. The said approach of the Trial Court is not proper and the same is warranting interference by this Court. In respect of application filed under Order 18, Rule 17 of CPC the parties need not specifically explain or mention about the exact documents in which questions to be asked to the witness. If the exact documents and questions are mentioned in the affidavit, then the witnesses will be in alert. Therefore in my view the trial Court has rendered erroneous finding and the same is liable to be set aside.

11. In the result, both the civil revision petitions are allowed by granting time for the plaintiff to file reply to the additional written statement, if any within a period of 15 days from the date of receipt of a copy of this order. Thereafter the trial Court is directed to dispose of the suit within a period of three months. No costs. Consequently, connected miscellaneous petition is closed.

02.03.2017

vs

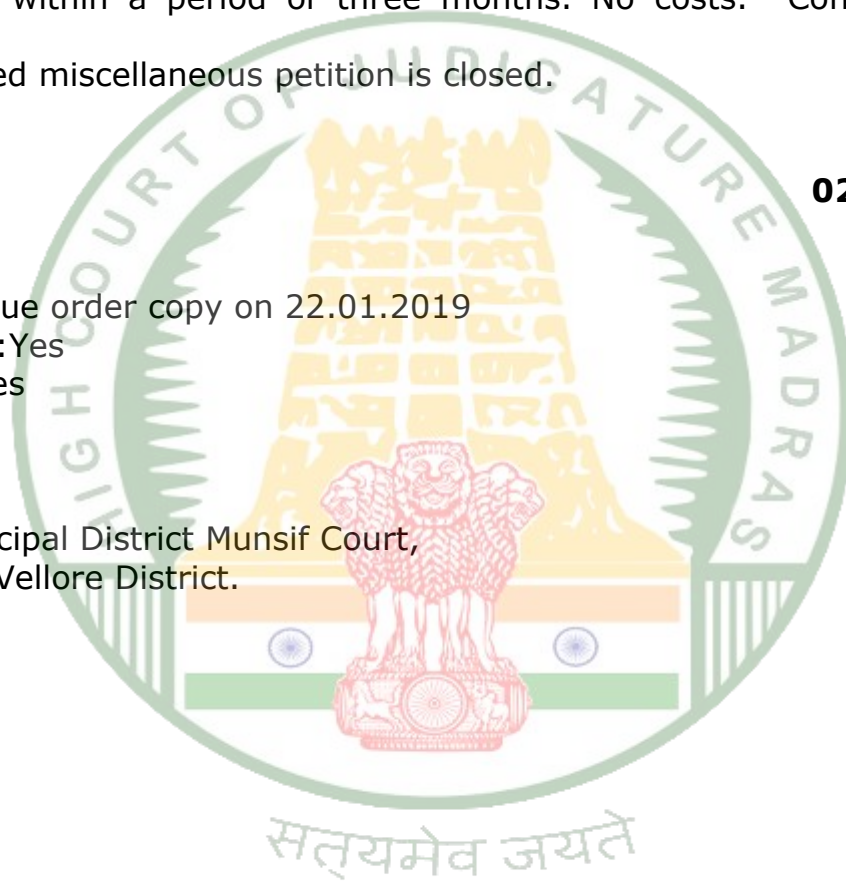
Note: Issue order copy on 22.01.2019

Internet: Yes

Index: Yes

To

The Principal District Munsif Court,
Ambur, Vellore District.



WEB COPY

M.V.MURALIDARAN, J.

VS



**CRP(PD)Nos.3695 & 3696 of 2013
and
M.P.No.1 of 2013**

WEB COPY 02.03.2017