

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2017

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRP(PD)Nos.700 & 701 of 2013
and
M.P.Nos.1 and 1 of 2013

1.M.N.Sundarrajan

2.S.Chandravathi

.. Petitioners in both the CRPs

Vs.

K.Shoukath Ali

.. Respondent in both the CRPs

Common Prayer: Civil Revision Petition under Article 227 of the Constitution of India, against the order dated 16.11.2012 passed by the learned II Additional District Judge, Salem in I.A.Nos.218 and 219 of 2012 praying for re-opening the case to examine the defendants as witnesses in O.S.No.36 of 2009 pending on the file of the learned II Additional District Judge, Salem.

(In both the CRPs)

For Petitioners : Mr.G.Vetrivel Rajan

For Respondent : No Appearance

COMMON ORDER

Both the Civil Revision Petitions are directed against a Common Order dated 16.11.2012 made in I.A.Nos.218 and 219 of 2012 in O.S.No.36 of 2009 on the file of the learned II Additional District and Sessions Judge, Salem.

2.The revision petitioners aggrieved over dismissal of their application to reopen the above suit and to adduce evidence is before this Court by way of these two Civil Revision Petitions.

3.I heard Mr.G.Vetrivel Rajan, learned counsel for the Revision Petitioners and there is no representation on behalf of the respondents in both the Civil Revision Petitions and perused the entire records.

4.The facts in brief require for disposal of this Civil Revision Petitions stand as follows:

According to the revision petitioners/defendants, he as vendor entered with a sale agreement with the respondent herein as vendee, in respect of suit properties under a sale agreement dated 07.07.2008, viz Document No.1 filed under Order 7, Rule 14 of CPC along with

plaint.

5. Whereas according to the respondent, the revision petitioners failed to execute the Sale Deed by receiving the balance sale consideration payable to the revision petitioners. Therefore he came up with above suit for specific performance to execute a sale deed in line with the sale agreement stated above.

6. The records further disclose that evidence were let in by either side such that on behalf of revision petitioners/defendants, the 2nd petitioner who is the wife of the 1st petitioner examined herself as PW-1. Thereafter the defendant's evidence was closed by Trial Court basing upon an endorsement made by their counsel denoting that there is no further witness on their behalf to be examined. Thereupon the suit was posted for arguments.

7. In the said circumstance the revision petitioners filed I.A.Nos.218 and 219 of 2012, such that to re-open the case and examine himself as DW-2.

8. The Learned trial Judge holding that once the defendants/revision petitioners having affirmed that there is no further witness or evidence to be let in on their side by endorsing to that

effect through their counsel, now cannot be permitted to reopen the case and adduce evidence on their behalf.

9. Hearing upon the submissions of the Learned Counsel for the revision petitioners and on close perusal of the impugned orders, it is seen that the reason projected behind the endorsement so made by their counsel is that the 1st revision petitioner at the contemporary period suffered out of serious Medical ailments and out of it he was not in a position to adduce evidence and take part in Court proceedings.

10. The Learned Counsel for Revision Petitioners emphasizing the above reason sought for allowing of these civil revision petitions so as to reopen the case and to permit the 1st petitioner herein to adduce evidence as DW-2.

11. Admittedly the suit on hand is for specific performance and sale price according to the revision petitioners, vendee is around 95 Lakh. The respondent herein had also not disputed the title of revision petitioners over the suit property.

12. In the said circumstance it is further seen that yet another suit in O.S.No.17 of 2010 is jointly tried along with this suit. It is seen

that the defendants evidence is closed on 31.07.2012 basing on an endorsement made by the counsel for revision petitioners that he is not going to examine 1st defendant as witness.

13.It further reveals that immediately on 23.08.2012 i.e., within 1 month the present applications were filed by the defendants/revision petitioners to examine the 1st revision petitioner.

14.At this juncture, it would be relevant to state that even according to plaint averments the revision petitioners 1 & 2 are the owners of suit properties with whom he entered the said sale agreement.

15.In such circumstance it is needless to say that the evidence of 1st revision petitioner will enable the Trial Court to arrive at proper decision. Admittedly the present application is made within a period of 1 month and therefore there cannot be any suspicion that these applications are intended to protract the proceeding or made at a later point of time.

16.It is found that the Trial Court had closed defendant's evidence in the light of their endorsement made.

17. In this regard it would be useful to refer to the decision reported in AIR 2005 ORISSA 180, wherein it was held that suit is for specific performance of contract, a party to it is a material witness and his examination was necessary for arriving at right conclusion.

18. The only difference in respect of revision petitioner's case is that the evidence of defendants was closed in the instant case based on the endorsement.

19. It is settled principle of law that the cases have to be decided on merits and not on technical grounds. In other words as held by the Hon'ble Apex Court the rules of procedure are handmade of justice and to do substantial Justice an opportunity should be given to the parties to put forth their case.

20. In this regards it would be useful to quote the observation of Hon'ble Apex Court reported in AIR 1983 SC 355 holding that "But the law procedure devised for advancing Justice and not impleading the same a Code of Procedure is designed to facilitate justice and further its end not a penal enactment for punishment and penalties not a things designed to using people up."

21.For the foregoing reasons, both the Civil Revision Petitions are allowed and the trial Court is directed to re-open the case and fix a date for the evidence of 1st petitioner herein and complete the evidence within a period of one month from the date of receipt of a copy of this order and thereafter pass orders on merits and in accordance with law.

22.With the above observation, both the Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

07.02.2017

Note:Issue order copy on 13.12.2018

vs

Index : Yes

Internet : Yes

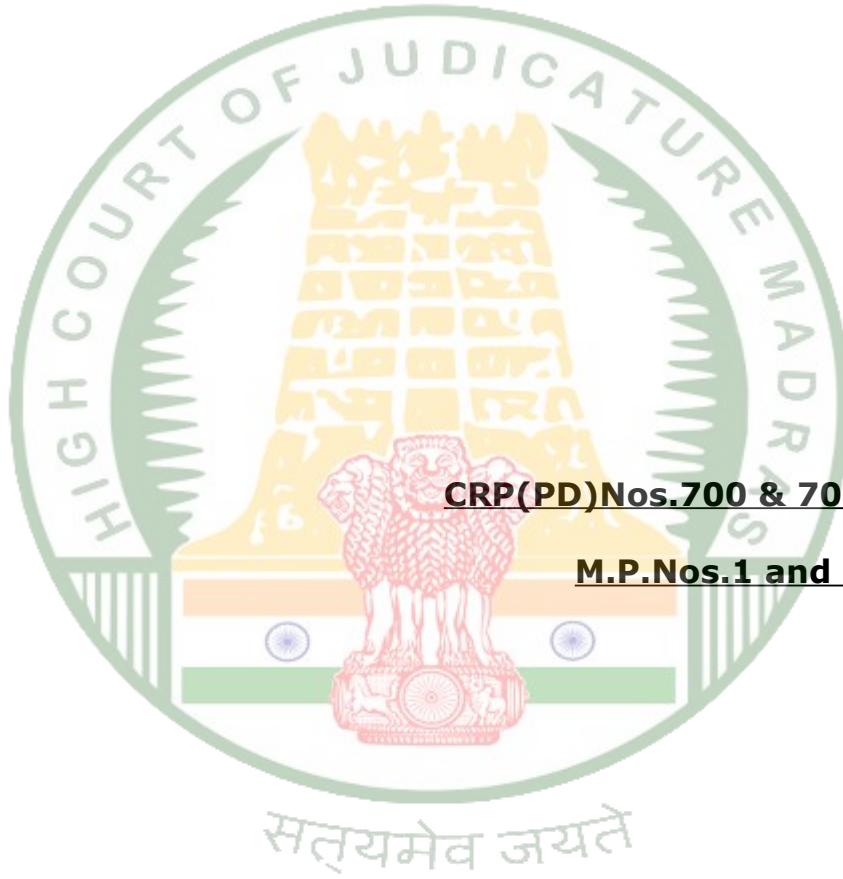
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To

The II Additional District and Sessions Judge,
Salem.

M.V.MURALIDARAN,J.

VS



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