



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) Nos.317 & 318 of 2017 (PD)

and

C.M.P (MD) No.1586 of 2017

R.Marappan

..Petitioner/Petitioner/3rd Defendant
in both C.R.Ps.

Vs.

A.N.Murugesan

..Respondent/Respondent/Plaintiff
in both C.R.Ps.

PRAYER in both C.R.Ps.: Civil Revision Petitions are filed, under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 02.12.2016 passed in I.A.Nos.725 & 726 of 2015 in O.S.No.266 of 2009 respectively, on the file of Additional Subordinate Judge, Karur.

For Petitioner : Mr.M.P.Senthil

COMMON ORDER

The issue involved in both the CRPs are interlinked and hence, both CRPs are disposed of by common order.

2.The petitioner has filed these Civil Revision Petitions to set aside the fair and decreetal order, dated 02.12.2016 passed in I.A.Nos.725 & 726 of 2015 in O.S.No.266 of 2009, by the learned Additional Sub Judge, Karur.

3.The petitioner is the third defendant and the respondent is the plaintiff in the suit. The respondent filed suit in O.S.No.266 of 2009 before the learned Additional Sub Court, Karur, for partition, against the petitioner and three other defendants. The petitioner and other defendants filed written statement. After framing issues, trial commenced. The respondent let in evidence, he was cross-examined and his side evidence was closed. The petitioner and other defendants also let in evidence and their side evidence was closed. The petitioner filed I.A.Nos.725 and 726 of 2015 for recall and reopen the P.W.1 for cross-examination. According to the petitioner, on the day, when the suit was posted for cross-examination of P.W.1 his Advocate was out of station and P.W.1 was not cross-examined on behalf of the petitioner. The petitioner has stated that he will complete the cross-examination of P.W.1 on a single day.



4.The respondent filed counter affidavit and denied the averments that on the day when the suit was posted for cross-examination of P.W.1, his Advocate was out of station. On the other hand, his Advocate was present in the Court and submitted that he adopts the cross-examination done on behalf of first defendant. The witnesses of defendants were cross-examined by counsel for the petitioner. The petitioner also examined himself and was cross-examined. He was aware of all the proceedings and prayed for dismissal of the applications.

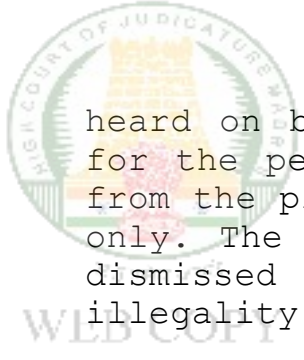
5.The learned Judge considering the averments made in the affidavit and counter affidavit and materials available on record, dismissed both applications holding that P.W.1 was cross-examined by counsel for the petitioner on 8.03.2013. When P.W.1 was recalled and further cross-examination was done and additional exhibits Ex.A16 to Ex.A19 were marked and also took note of the fact that the evidence on behalf of the petitioner and other defendants were concluded and the learned counsel for the respondent argued the suit on 11.02.2014 and defendants were heard on 25.02.2014. The learned Judge also held that there is no relief sought for against the petitioner in the main suit and therefore, there is no necessity to provide an opportunity to re-open and recall P.W.1 at belated stage.

6.Against the said order of dismissal made in I.A.Nos.725 & 726 of 2015, the petitioner has come out with the present Civil Revision Petitions.

7.The learned counsel for the petitioner reiterated the averments made in the grounds and submitted that the learned Judge erred in holding that no relief is sought for against the petitioner. The learned Judge ought to have seen that suit is collusive one between the respondent and defendants 1 & 2, in order of defeat his claim in O.S.No.294 of 2008 filed by him against the father of the respondent by dismissing the applications filed by the petitioner. The learned Judge has deprived the petitioner, opportunity to cross-examine the P.W.1 and establish his case and therefore, the petitioner could not prove the case that suit is collusive one.

8.I have heard the learned counsel appearing for the petitioner and perused all the materials available on record.

9.The petitioner has filed the applications to recall and reopen the P.W.1 for cross-examination. The respondent has contended that the counsel for the petitioner submitted that he adopts the cross-examination of P.W.1 done by counsel for the first defendant. The learned Judge from the materials has held that the petitioner's counsel cross-examined the P.W.1 on 08.03.2013 and after completion of evidence and arguments were



heard on behalf of plaintiff and defendants. The learned counsel for the petitioner has not denied this fact. Further, it is seen from the plaint, the relief is sought against the defendants 1 & 2 only. The learned Judge has considered all these aspects rightly dismissed the applications. In the circumstances, there is no illegality or irregularity warranting interference by this Court.

10. In the result, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

sd/-
Assistant Registrar(co)

/True copy/

Sub Assistant Registrar

To

The Additional Subordinate Judge, Karur.

Copy to: The Record Keeper
VR Section,
Madurai Bench of Madras High Court, Madurai

+1cc to Mr.M.P.Senthil, Advocate Sr.No.9275

am

sm:RR:7.3.2017:3P/4C

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