



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:01.02.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M. VELUMANICRP (MD).Nos. 2197 and 2198 of 2016 and
CMP(MD).Nos. 10174 and 10175 of 2016

M. Rajkumar : Petitioner/1st Respondent/
Plaintiff in both CRPs

Vs.

1. T. Chelladurai : 1st Respondent/Petitioner/
2nd Defendant in Both CRPs

2. Helen Ida : 2nd Respondent/2nd Respondent/
1st Defendant in Both CRPs

Prayer in both CRPs: These Civil Revision Petitions are filed under Article 227 of the Constitution of India to call for the records pertaining to I.A.Nos.284 and 285 of 2016 in O.S.No.81 of 2006 on the file of the District Court, Kanniyakumari District in Nagercoil and set aside the order in I.A.Nos.284 and 285 of 2016 in O.S.No.81 of 2006 dated 09.09.2016 respectively.

For Petitioner : Ms. L. Victoria Gowri

For Respondents : Mr. K.P. Narayanakumar - R1
R2- No Appearance**COMMON ORDER**

These Civil Revision Petitions are filed to call for the records pertaining to I.A.Nos.284 and 285 of 2016 in O.S.No.81 of 2006 on the file of the District Court, Kanniyakumari District in Nagercoil and set aside the order in I.A.Nos.284 and 285 of 2016 in O.S.No.81 of 2006 dated 09.09.2016 respectively.

2. The revision petitioner is the plaintiff. The respondents are defendants. The petitioner filed suit for specific performance. The respondents filed written statement and contesting the suit. The trial commenced and the evidence was closed after letting in evidence by both parties on 03.02.2016. The suit was posted for arguments on 10.02.2016. The first respondent, who is the second defendant filed two applications in I.A.No.284 of 2016 and I.A.No.285 of 2016 to re open and to re call PW.1.



According to first respondent, some important questions were not put to the petitioner which are vital to decide the suit.

3. The petitioner filed counter and submitted that the first respondent has not given any reason for reopen and to recall PW.1. The suit was filed on 13.07.2006. The evidence on the side of the defendants was closed on 03.02.2016 and the suit was posted for arguments on 10.02.2016. At that time after taking several adjournments, filed above two applications to fill up omission. The power under Order 18 Rule 17 of CPC is discretionary power and not intended to be used to fill up omissions. The reason given in the affidavit filed in support of the petition is vague and the respondent has not stated specific purpose for which PW1 to be recalled.

4. The learned Judge even though held that contention of the first respondent cannot be accepted allowed the applications holding that in view of the natural justice, fairness and equity on condition that first respondent to pay a sum of Rs.1000/- each allowed the applications.

5. Against that order, the present Civil Revision Petitions are filed.

6. The learned counsel appearing for the petitioner reiterated the averments made in the counter affidavit filed in Interlocutory Applications and grounds raised in the Civil Revision Petitions and submitted that the learned Judge erred in allowing the applications after holding that contention of the first respondent for reopening and recall of PW.1 cannot be accepted. The learned counsel appearing for the petitioner submitted that the on 06.10.2016 the learned Judge marked the document as Ex.D13 on the side of the first respondent.

7. The learned counsel appearing for first respondent submitted that suit is for specific performance. At the time of cross examination, certain vital questions were not put forth to PW.1 which were pleaded in the written statement and in the interest of justice, the learned Judge allowed the applications and there is no error in the said order and prayed for dismissal of these Civil Revision Petitions.

8. I have heard the learned counsels appearing on either side and perused the materials available on record.

9. The first respondent has filed Interlocutory Application for reopening and recall the PW.1. From the averments in the affidavit it is seen that the first respondent has not given any reasons for re opening and recalling of PW.1. The averments in the affidavit are vague. The learned Judge erred in allowing the applications after holding that even though the



contention of the first respondent has not been accepted. The learned Judge has exceeded his jurisdiction conferred on him and committed irregularity and illegality in allowing the applications.

10. In the circumstances the order of the learned Judge is liable to be set aside and hereby set aside and both the Civil Revision Petitions are allowed. In view of this order, the order of the learned Judge dated 06.10.2016 marking notice as Ex.D13 is also set aside.

11. The learned counsel appearing for the petitioner and the respondent submitted that they are ready to argue the matter and completed their arguments and requested for speedy disposal of this suit.

12. The suit is of the year 2006, the learned District Judge, Nagercoil is directed to dispose the suit as expeditiously as possible in any event not later than 30th April 2017. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (C)

/True Copy/

Sub Assistant Registrar

trp

To

The District Judge, Kanniyakumari District @ Nagercoil

+1CC to Mr.K.P.Narayanakumar, Advocate Sr.No.5402

+1CC to Mr.L.Victoria Gowri, Advocate Sr.No.5468

GJM/BS/3.3.17-3p-4C

CRP (MD).Nos. 2197 and 2198 of 2016
01.02.2017