

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRP.P.D.No.1332 of 2018

and

CMP.No.6940 of 2018

Soundiram

... Petitioner

Vs

- 1.Eswaran
- 2.Bharathi
- 3.The District Collector
Salem Collectorate,
Salem District.
4. The Tahsildar,
Mettur Taluk Office,
Salem District.
5. Revenue Inspector,
Kolathur Pirga, Kolathur, Mettur Taluk,
Salem District.
- 6.Village Administrative Officer,
Alamarathupatty Village,
Kolathur, Mettur Taluk,
Salem District.

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 07.02.2018 made in I.A.No.18 of 2018 in O.S.No.9 of 2011 on the file of the District Munsif Court, Mettur

For Petitioner : M/s.V.Sekar

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 07.02.2018 made in I.A.No.18 of 2018 in O.S.No.9 of 2011 on the file of the District Munsif Court, Mettur.

2. The plaintiff in O.S.No.9 of 2011 on the file of the District Munsif, Mettur, is the revision petitioner herein.

3. According to the petitioner, the petitioner herein had filed a suit in O.S.No.9 of 2011 seeking declaration, permanent injunction and mandatory injunction. In the aforesaid suit, after completion of pleadings, issues were framed, trial was completed and after closing the evidence of both sides, the petitioner herein had filed an application in I.A.No.959 of 2015. The respondents 3 to 6 herein remained exparte in the suit and the said application in I.A.No.959 of 2015 was dismissed on 03.11.2015. Subsequently, the petitioner herein was also proceeding the case having the defendants 3 to 6/respondents 3 to 6 as exparte when the case was posted for examination of further witness of defendants. After closing the evidence of DW4, the respondents 3 to 6 have preferred the civil revision petition in CRP.No.984 of 2016 against the dismissal order in I.A.No.959 of 2015. Subsequently, as per

the order in CRP.No.984 of 2015 dated 11.07.2017, the said I.A.No.959 of 2015 was allowed and exparte decree against the respondents 3 to 6 were set aside and they were given an opportunity for cross examination of P.W.'s 1 to P.W.3 and DW1 to DW4. Since, this court had given a direction to dispose of the case within six months, this Court is very keen and particular to avoid unnecessary delay of the case. After cross examining the witness of plaintiff and defendants 3 to 6, the evidence of DW5 was taken by marking Exs.B11 to B.17. But the petitioner has filed this petition in I.A.No.18 of 2018 to eschew the evidence of the 6th defendant i.e. Village Adminstrative Officer, Alamarathupatty, who was examined as D.W.5. After completion of the evidence of defendants 1 and 2, the 6th respondent filed a proof affidavit on behalf of himself and also other respondents 4 and 5. The trial court has accepted the proof affidavit recording the statement of 6th defendant as DW5 by alleging that the main dispute in the case is regarding the illegal patta transfer order made by the Tahsildar, Mettur, 4th defendant and hence the V.A.O. Alamarathupatty as DW5 cannot depose on behalf of Tahsildar also. The trial Court has failed to consider the facts of the case and dismissed the said application. Aggrieved by the said order, the petitioner has filed the present civil revision petition before this Court.

4. The learned counsel for the petitioner would submit that the petitioner filed an application in I.A.No.18 of 2018 to eschew the evidence of D.W.5 as not acceptable and without considering that the Village Administrative Officer is not empowered to lead the evidence on behalf of the defendants 3, 4 and 6, the trial Court has dismissed the application. Hence, the impugned order passed by the trial Court is liable to be set aside.

5. The learned counsel for the respondents would submit as per the direction of this Court in CRP.No.984 of 2016, after cross examining the plaintiff side witness and defendants 1 and 2 side witnesses on the side of the defendants 3 to 6, DW5 was examined in chief and revenue records were marked as Ex.B1 to B17. But the petitioner instead of cross examining the witness and proceeded with the case further, he filed the application in I.A.No.18 of 2018 to eschew the evidence of DW5 which is not maintainable.

6. There is no record to show that at the time of marking of the documents, the petitioner has raised an objection for making of documents and competency of the witness. Even otherwise, it is left open to the petitioner to raise the question before the witness during cross examination about competency of the witness and validity of the evidence and the same

can be decided only after the trial along with other defence. The reason stated in the affidavit for application to eschew the evidence of P.W.5 is not sustainable either under law or on facts.

7. Considering the facts and circumstances of this case, there is no illegality or infirmity in the order passed by the trial Court. Hence, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.04.2018

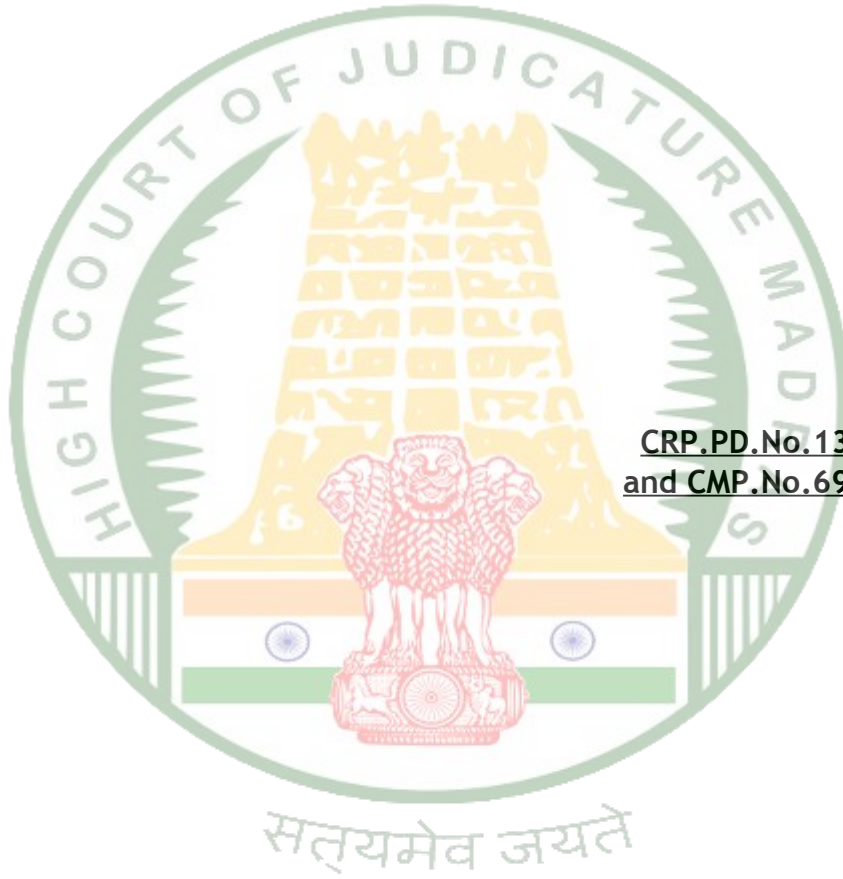
Index : Yes/No
Internet : Yes/No
Speaking order : Non Speaking Order
kkd

To

- 1.The District Munsif Court,
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P.VELMURUGAN,J.

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