

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.06.2018

CORAM

The Hon'ble Mr.Justice **P.VELMURUGAN**

CRP(PD)Nos.1388 and 1389 of 2018

and
C.M.P.No.7402 of 2018

1.S.Rukmangathan

2.Devaraj

3.S.Jagannathan

4.Chandra

5.Baghyalakshmi
D/o.Subramani

.. Petitioners
in both petitions

vs.

1.Smt.Devaki

2.Smt.Baghyalakshmi,
W/o.Jaganathan

3.Smt.Geetha

.. Respondents
in both petitions

Civil Revision Petition filed under Section 115 CPC, against the common fair and decretal order dated 12.12.2017 passed in I.A.Nos.15369 and 15370 of 2017 in O.S.No.5583 of 2015 by the learned Principal Judge, City Civil Court, Chennai.

For Petitioners

... B.Thanickachalam
(for both the petitions)

For Respondents

... Mr.M.Sriram
for R.1
(for both the petitions)

COMMON ORDER

The Civil Revision Petitions have been filed against the fair and decretal order dated 12.12.2017 passed in I.A.Nos.15369 and 15370 of 2017 in O.S.No.5583 of 2015 by the learned Principal Judge, City Civil Court, Chennai.

2.The petitioners herein are the plaintiffs and the respondents herein are the defendants.

3.The brief facts of the case are as follows:

The petitioners filed a suit in O.S.No.5583 of 2015 seeking for partition of the plaintiffs' half share in the suit property by metes and bounds and allot one share to the plaintiffs and a direction to the defendants to pay the mesne profits at Rs.36,000/- together with interest @ 24% per annum and to pay future mesne profits @ Rs.1,000/- per month from the date of the institution of the suit till the delivery of possession on the file of the learned Principal Judge, City Civil Court, Chennai. Pending suit, the petitioners/plaintiffs filed

two applications namely, in I.A.No.15369 of 2017 under Order 18 Rule 17 and Section 151 C.P.C. to recall P.W.1 to adduce additional evidence in O.S.No.5583 of 2015 and I.A.No.15370 of 2017 under Order 7 Rule 14(3) and Section 151 C.P.C. to receive additional documents 1 to 3. The trial Court, after considering the submissions of the learned counsel for both sides and also considering the facts and circumstances of the case, dismissed the said applications by order dated 12.12.2017. Aggrieved by the said order, the present civil revision petitions have been filed by the petitioners.

4.The learned counsel for the petitioners submitted that after completion of the pleadings, the trial Court framed issues. After examination of P.W.1, the suit was posted for cross examination of P.W.1, wherein the learned counsel for the respondents/defendants, stated that the first petitioner never lived in the suit property. To disprove the same, the petitioners have to file certain additional original documents. Hence, the petitioners filed two applications namely, I.A.Nos.15369 and 15370 of 2017 to recall P.W.1 to adduce additional evidence and to receive additional documents 1 to 3. The trial Court erroneously dismissed both the applications on the ground that the said documents are prior to the filing of the suit and are very

much available at the time of filing of the suit. Hence, the impugned order passed by the trial Court is liable to be set aside.

5.The learned counsel for the respondents submitted that P.W.1 was examined and he was cross examined by the learned counsel for the respondents/defendants. At this juncture, the petitioners, filed these two applications. As the said applications are filed at the belated stage, they are not maintainable either in law or on facts. Even the petitioners have not stated any valid reasons to produce the additional documents, the trial Court rightly dismissed the applications. Hence, the civil revision petitions are liable to be dismissed.

6.Heard the rival submissions made by the learned counsel on either side and perused the materials available on record.

7.The main contention of the petitioners is that the petitioners are residing in the very same address, which is mentioned in the documents sought to be produced. Even at this stage, P.W.2 has not come to the witness box. If the petitions are allowed, no prejudice would be caused to the respondents.

8. At this stage, the petitioners have accepted to pay the cost to the respondents for the inconvenience caused to them. Considering the fact that if the order passed by the trial Court is set aside no prejudice would be caused to the respondents, they will be given an opportunity for cross examination and in the interest of justice, this Court is inclined to set aside the order passed by the trial Court and pass the following order:

"(i)The petitioners are directed to pay a sum of Rs.10,000/- (Rupees Ten thousand only) to the respondents as costs on or before 25.06.2018 and after payment of cost, the petitioners shall file a cost memo before the trial Court.

(ii)On receipt of the cost memo, the trial Court is directed to permit the petitioners to mark the additional documents through P.W.1 and proceed the suit further in accordance with law. "

P.VELMURUGAN.J,

cla

With the above directions, the civil revision petitions are disposed of. No costs. Consequently, connected miscellaneous petition is closed.

13.06.2018

Index:Yes/No
Speaking Order:Yes/No

cla

To

The Principal Judge,
City Civil Court,
Chennai.

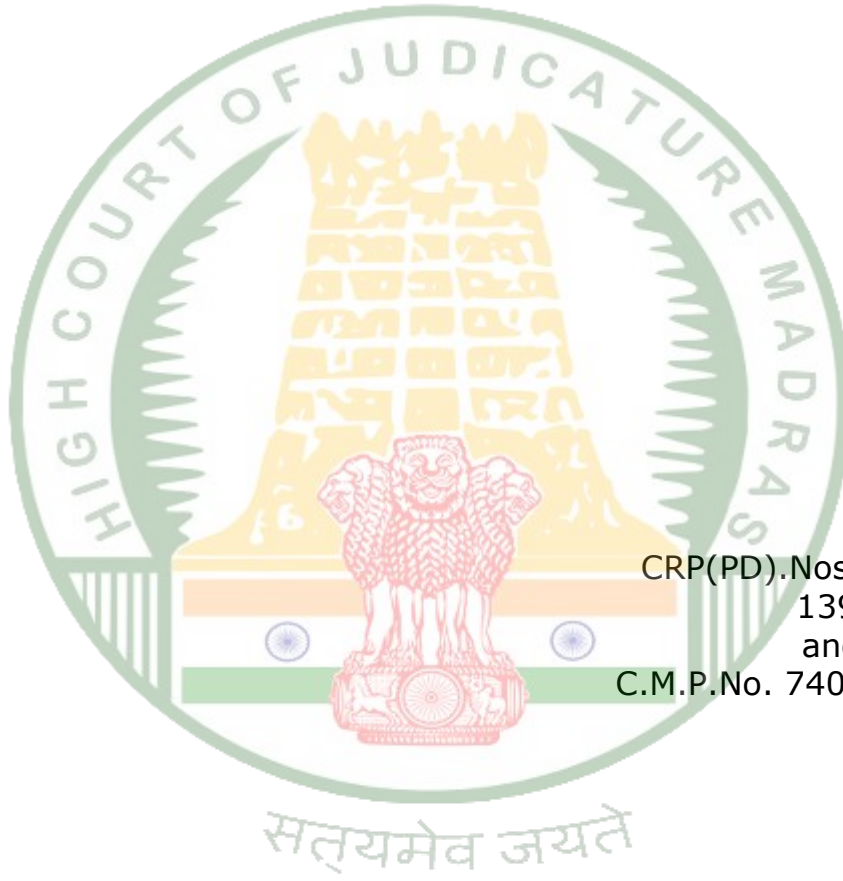


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CRP(PD).Nos.1388 and
1389 of 2018
and
C.M.P.No. 7402 of 2018

P.VELMURUGAN.J,

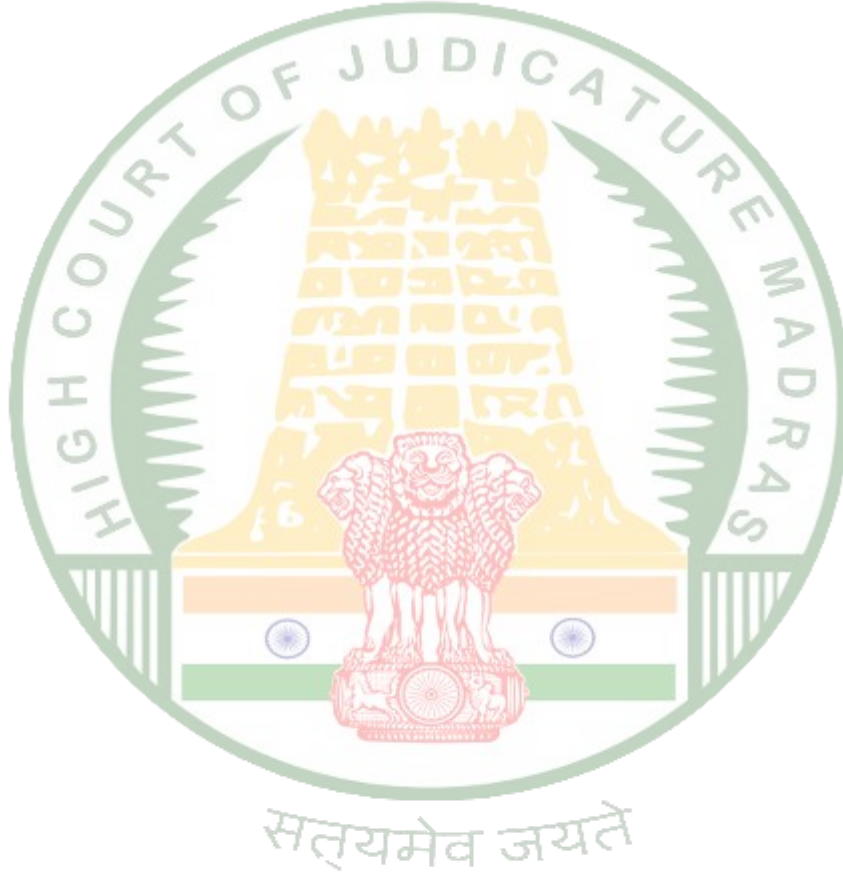
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CRP(PD).Nos.1388 and
1399 of 2018
and
C.M.P.No. 7402 of 2018

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13.06.2018



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