

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.04.2018

Coram:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**C.R.P.(PD)Nos.1461 & 1477 of 2018 andC.M.P.Nos.7798 & 7866 of 2018

Arumugam

... Petitioner in both the CRPs

Vs.

1. Arulmigu Semathamman &
Anandeeswarar Thirukoil,
Rep. by its Executive Officer,
having office at Arulmigu Angalaparameswari Amman &
Kasiviswanathaswamy Thirukoil,
No.5, South Mada Street, Choolai,
Chennai - 600 012.
2. K.Mahalingam
3. The Commissioner,
Corporation of Chennai,
Ripon Buildings, Park Town,
Chennai - 03.

... Respondents in both the CRPs

Prayer in both the CRPs: Civil Revision Petitions have been filed under Article 227 of the Constitution of India against judgment and decree dated 02.01.2018 passed in I.A.Nos.15216 & 15215 of 2017 respectively in O.S.No.3721 of 2015 by the VIII Assistant Judge, City Civil Court, Chennai and to set aside the same and to allow the Civil Revision Petition.

For Petitioner : Mr.Y.Bhuvaneshkumar in both the CRPs

COMMON ORDER

These civil revision petitions have been filed against judgment and decree dated 02.01.2018 passed in I.A.Nos.15216 & 15215 of 2017 respectively in O.S.No.3721 of 2015 made by the learned VIII Assistant Judge, City Civil Court, Chennai.

2 The first respondent is the plaintiff who filed a suit in O.S.No.3721 of 2015 against the petitioner herein and the respondents 2 & 3 for permanent and mandatory injunction in respect of the suit property. In the said suit, the revision petitioner/2nd defendant filed two interlocutory applications seeking to recall and reopen the Plaintiff side evidence.

3 The trial court after hearing both the parties dismissed both the applications by a common order dated 02.01.2018.

4 Aggrieved against the above said order dated 02.01.2018 made in I.A.Nos.15215 & 15216 of 2017 by the learned VIII Assistant

Judge, City Civil Court, Chennai, the present civil revision petitions have been preferred by the petitioner, who is second defendant in the main suit.

5 The learned counsel for the revision petitioner submitted that when the suit was posted for cross examination of PW1, the father of the senior counsel on record was hospitalized and subsequently expired and he also subsequently hospitalized. Because of that only, the learned counsel was not able to cross examine PW1 and further the junior counsel who attended the Court on that day was not permitted to cross examine PW1. The learned counsel further contended that, to prove the case of the revision petitioner/2nd defendant, it is become necessary to cross examine PW1. Hence the revision petitioner/2nd defendant prays to allow these civil revision petitions by setting aside the order dated 02.01.2018 passed in I.A.Nos.15216 & 15215 of 2017 in O.S.No.3721 of 2015 by the learned VIII Assistant Judge, City Civil Court, Chennai.

6 Heard the learned counsel for the petitioner and perused the materials available on record.

7 On a perusal of the adjudication orders of the trial Court filed in support of these civil revision petitions, it reveal that the case was posted and adjourned on several dates for cross examination of PW1. The learned counsel for the revision petitioner/2nd defendant has not chosen to cross examine PW1. If at all, he had any personal inconvenience, he should have done any alternative arrangement to proceed the case further.

8 However, in order to meet the ends of justice, the order dated 02.01.2018 passed in I.A.Nos.15216 & 15215 of 2017 in O.S.No.3721 of 2015 by the VIII Assistant Judge, City Civil Court, Chennai, is hereby set aside. The revision petitioner/2nd defendant shall be permitted to cross examine PW1 on condition that the petitioner shall pay a sum of Rs.25,000/- to the plaintiff in the suit in O.S.No.3721 of 2015. The petitioner is further directed to file a memo before the trial court on or before 05.06.2018 after complying the above condition and on filing of such memo, the trial Court shall permit the petitioner to cross examine PW1 on 07.06.2018. It is made clear that the petitioner shall complete the cross examination of PW 1 on 07.06.2018 itself, no further opportunity will be given to the petitioner/2nd defendant to cross examine PW1. After completing the

evidence of PW1, the trial Court shall proceed the matter in accordance with law without influencing the observations made in the order passed in the interlocutory applications and also in these civil revision petitions.

9 In the result, these civil revision petitions are allowed with cost. Consequently connected miscellaneous petitions are closed.

24.04.2018

Index: Yes/No
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P.VELMURUGAN, J.,

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To

The VIII Assistant Judge, City Civil Court,
Chennai



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