

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.10.2018

Coram

The Honourable Ms.Justice P.T.ASHA

C.R.P(PD)Nos.4966 & 4967 of 2011

and

M.P.No.1 of 2011 in C.R.P(PD)No.4966 of 2011

L.Ashok Chand

...Petitioners in both C.R.Ps

Versus

1.N.Kasthuri
2.T.N.Jeyakumar
3.Usha Rani
4.J.Balachander

...Respondents in both C.R.Ps

These Civil Revision Petitions are filed under Article 227 of the Constitution of India praying to set aside the order and decretal order dated 11.08.2011 made in I.A.Nos.658 & 659 of 2011 in O.S.No.321 of 2007 on the file of the Hon'ble District Munsif Court, Tambaram and allow the above Civil Revision Petitions.

For Petitioner
in both C.R.Ps

:

M.K.Jayakartha
for Mr.K.Kannan

For Respondent - 1
in both C.R.Ps

:

Died

For Respondent - 2
in both C.R.Ps : Mr.V.Ravi

For Respondent - 3
in both C.R.Ps : No Appearance

COMMON ORDER

These Civil Revision Petitions are filed challenging the orders passed by the learned District Munsif, Tambaram in I.A.Nos.658 & 659 of 2011 in O.S.No.321 of 2007 dated 11.08.2011, in and by which the learned District Munsif had allowed the Applications filed by the first respondent herein for reopening the evidence and recalling P.W.1 (Plaintiff) for further cross-examination respectively.

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2. The brief facts necessary for disposing of these Civil Revision Petitions are as follows:

The revision petitioner herein had filed a suit in O.S.No.321 of 2007 for a permanent injunction restraining the respondents 2 & 4, their men, servants, agents, person or persons claiming through or under any of them from

interfering with the petitioner's lawful possession and enjoyment of the suit schedule property which he had purchased from the respondents under five sale deeds through their power agents.

3. The respondents 1 & 3 herein had filed their written statement denying the very sale deeds and the power given to their power agents.

4. The parties had gone to trial and the plaintiff was cross-examined extensively as P.W.1. The extensive cross-examination of the plaintiff/petitioner was concluded on 07.09.2011 and thereafter, the matter was being periodically adjourned for the defendants' side evidence. However, the defendants did not come forward to enter the box and on 18.07.2011, the second defendant/first respondent took out two Applications in I.A.Nos.658 & 659 of 2011 for reopening the evidence and recalling P.W.1 (Plaintiff) for further cross-examination.

5. In the affidavits filed in support of the said Applications, the first respondent had contented that she had come to know about the conclusion of the cross-examination of P.W.1 only recently and she had not been able to contact her counsel on account of illness and therefore, she wanted to cross-examine P.W.1.

6. The revision petitioner had filed a detailed counter affidavit in which he had contented that it was the second defendant's counsel who had cross examined him at length and questions on all aspects had also been asked to him and the Applications filed in I.A.Nos.658 & 659 of 2011 are nothing but an attempt to drag on the proceedings. The petitioner had also contented that the impugned Applications are nothing but an abuse of process of law. The learned District Munisif, Tambaram by his order dated 11.08.2011 proceeded to allow both the Applications on the ground that a chance should be given to the first respondent to cross examine the revision petitioner. Challenging the said order, the revision petitioner is before this court.

7. Heard Ms.K.Jayakartha, learned counsel for the petitioner.

8. The learned counsel for the petitioner has filed two Memos dated 25.10.2018 before this Court. The said Memos read as follows:

"It is submitted that the first respondent died on 08.05.2016. As per the legal heirship certificate of the husband (M.Natarajan) of deceased N.Kasthuri, the respondents 2 & 3 herein are the legal heirs and they are already on record and the same may be recorded as they are the surviving legal heirs of the deceased first respondent."

The aforesaid Memos are taken on file and the same shall form part of the record. Registry is directed to carry out necessary amendment.

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9. From a perusal of the records, particularly, the order of the learned District Munsif, Tambaram, it is seen that the cross examination of P.W.1 was concluded on 07.09.2011 and the matter was being periodically adjourned for defendants'

side evidence but the defendants did not come forward to

enter the box. Ultimately, on 11.04.2011, the counsel for the defendants had reported no instructions and the matter was adjourned to 25.04.2011 and 02.06.2011 for the appearance of defendants and on 02.06.2011, Court notice was also issued to the defendants and on 16.06.2011, the first respondent had appeared before the Court and a month later, on 18.07.2011, Applications in I.A.Nos.658 & 659 of 2011 have been filed by the first respondent.

10. In the light of the above, the learned District Munsif, Tambaram has committed a grave error in allowing the Applications only on the ground that a chance should be given to the first respondent to cross examine the revision petitioner. The learned District Munsif, Tambaram had not taken into account the conduct of the parties which clearly indicates that the only attempt on the side of the first respondent and the other respondents is to drag on the proceedings.

11. The learned District Munsif, Tambaram had also lost sight of the fact that it is the very same counsel who had

reported no instructions on behalf of the first respondent who had filed the impugned Application. The order of the learned District Munsif, Tambaram is perverse, further it suffers from an infirmity and therefore, the same is liable to be set-aside.

12. In the result, these Civil Revision Petitions are allowed and the orders passed by the learned District Munsif, Tambaram in I.A.Nos.658 & 659 of 2011 in O.S.No.321 of 2007 dated 11.08.2011 is set aside. Considering the fact that the suit is of the year 2007 and the case was been adjourned for defendants' side evidence, the learned District Munsif, Tambaram is directed to dispose of the case within a period of three months from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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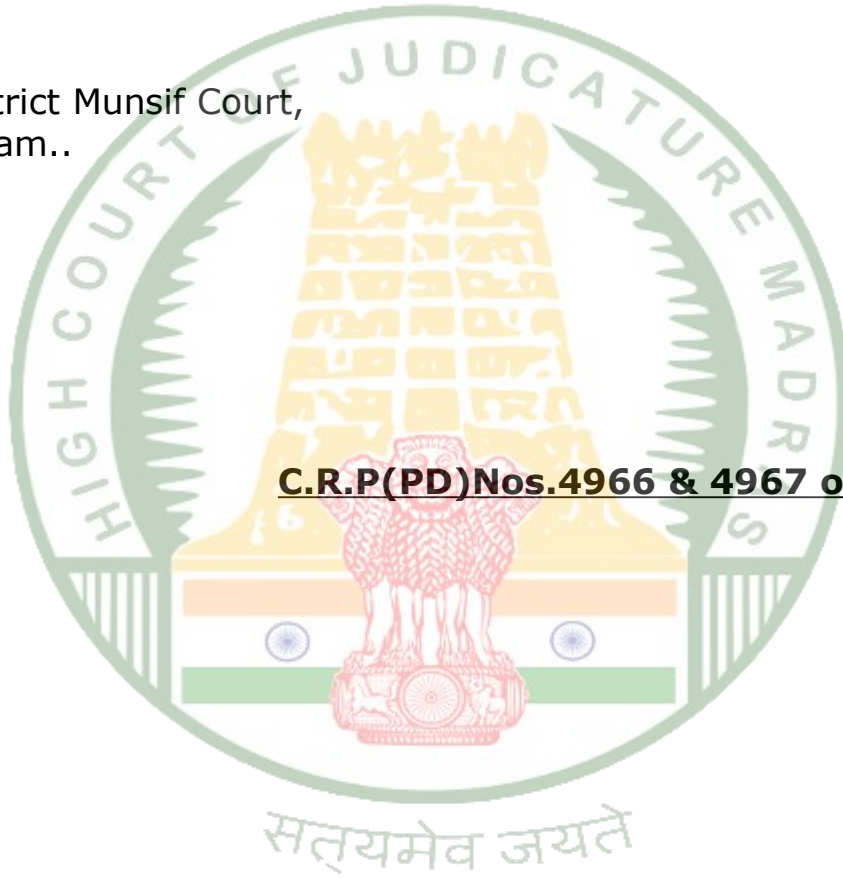
Index : Yes/No

P.T.ASHA, J.,

mrr

To

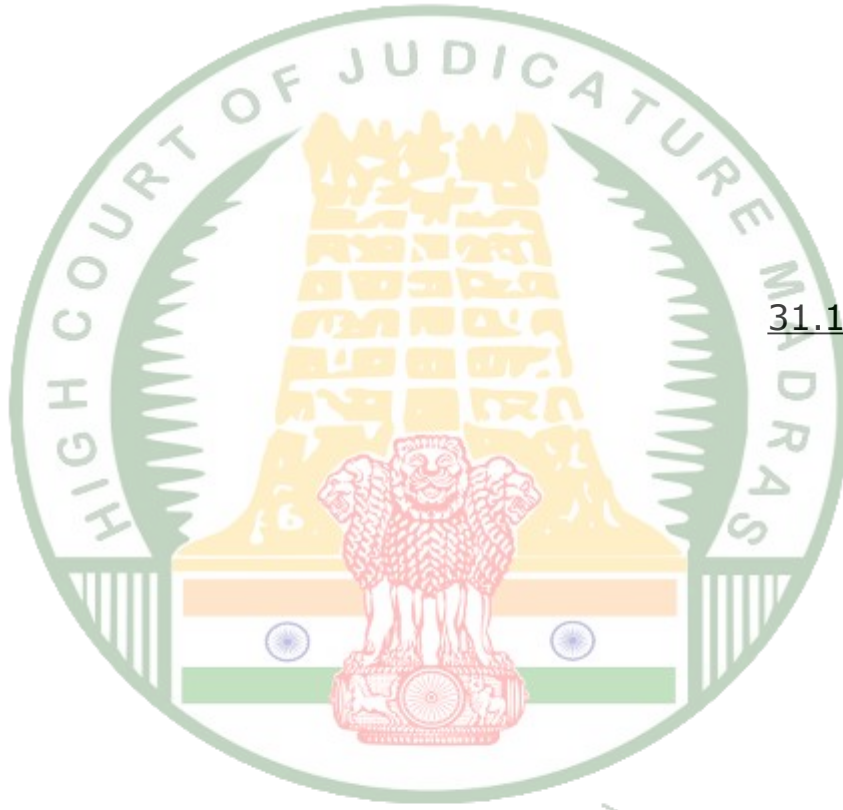
The District Munsif Court,
Tambaram..



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