

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No.4214 of 2017

B. Anitha Kumari

.. Petitioner

Vs

1. S. Ravi
2. S. Thiyagarajan
@ icehouse Thiyagarajan
3. K.M. Ismail
4. Mahavir Surana
5. M. Rajan

6. The Manager
Bank of India
Asset Recovery Branch
Star House, 1st Floor
No.30 Erabalu Street
Chennai - 600 001.

.. Respondents

PRAYER: This Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the fair and decretal order dated 21.08.2017 partly allowing the I.A. No.86 of 2017 in O.S. No.109 of 2010

by the III Additional District Judge, Tiruvallur at Poonamallee.

For Petitioner : M/s.G. Peranban

For Respondents : Mr. S. Vijayandan for R1

Mr. R. Selvakumar for R6

No Appearance for R2 to R5

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 21.08.2017 partly allowing the I.A. No.86 of 2017 in O.S. No.109 of 2010 by the III Additional District Judge, Tiruvallur at Poonamallee.

2. The 1st respondent filed the suit in O.S. No.109 of 2010 for declaration of title and for recovery of possession against the petitioner. Subsequently, the 1st respondent also filed an Interlocutory Application under Order 11 Rule 14 of CPC to direct the 3rd defendant to produce the petition mentioned documents, in I.A. No.86 of 2017. According to the plaintiff, the 3rd defendant has been examined as DW-1 and during the cross examination she deposed that she can produce the petition mentioned documents. Stating that the said documents are very much

essential for proper adjudication, the present application was filed. The trial court allowed the said application. Aggrieved by the said order, the 3rd respondent has filed the civil revision petition before this Court.

3. The learned counsel for the revision petitioner would submit that the 1st respondent cannot compel the petitioner to produce the documents before the court below in the aforesaid suit.

4. The learned counsel for the 1st respondent would submit that the court below has allowed the said application, considering the examination of DW-1/ revision petitioner that she can produce the documents, the court below has allowed the application, which is perfectly valid.

5. The issue involved in the case on hand is, whether the 1st respondent can compel the petitioner to produce the documents. The said issue has already been dealt by this Court, in the case of ***D.Babu Vs. K.A.Dinachandran and Others*** reported in **2013 (1) CTC 881** and in the case of ***V.L.Ramanathan Vs. Salem Nagarathar Sangam*** reported in

2014 (4) LW 174, wherein it has been held that *"the plaintiff cannot summon a contesting defendant and compel him to give evidence on his side. Even if the second defendant's evidence is relevant and necessary, he being a defendant contesting along with his wife namely the first defendant, the plaintiff may at the best demand that adverse inference be drawn against the defendants"*.

6. Therefore, in view of the above cited judgment, this Court is of the view that the order passed by the court below is set aside. In fine, the Civil Revision Petition is allowed. No costs.

14.03.2018

Index: Yes/ No

Speaking Order/Non Speaking Order

[Issue order copy on 04.05.2018]

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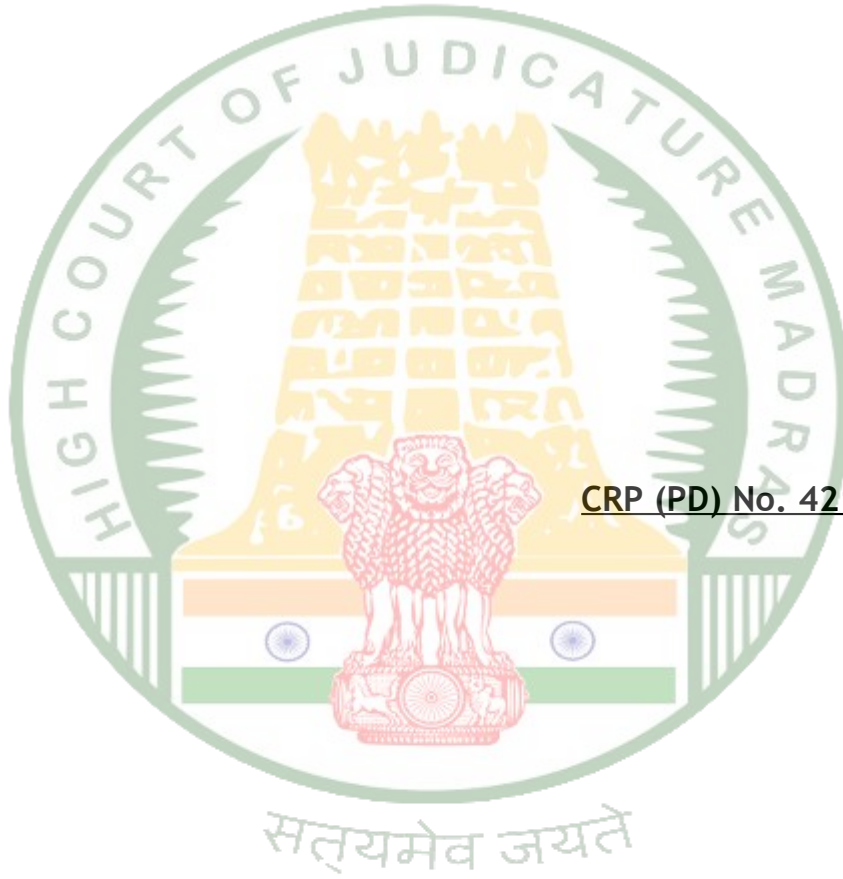
To

The Additional District Judge,
Tiruvallur at Poonamallee.

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D. KRISHNAKUMAR J.,

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