

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.1439 and 1440 of 2015
M.P.No.1 of 2015

Ammasi Gounder .. Petitioner
in both C.R.Ps.

Vs.

1.Thailammal
2.Kamala .. Respondents in
both C.R.Ps.

COMMON PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal orders dated 02.03.2015 made in I.A.Nos.82 and 81 of 2015 respectively in O.S.No.196 of 2009 on the file of the II Additional Sub Court, Salem.

For Petitioner : Dr.P.Jagadeesan

For Respondents : M/s.Zeenath Begum

COMMON ORDER

These Civil Revision Petitions are filed to set aside the fair and decretal orders dated 02.03.2015 made in I.A.Nos.82 and 81 of 2015 respectively in O.S.No.196 of 2009 on the file of the II Additional Sub Court, Salem.

2.The issues and the parties involved in both the Civil Revision Petitions are one and the same and therefore, disposed of by this common order.

3.The petitioner is first defendant and respondents are the plaintiffs in O.S.No.196 of 2009 on the file of the II Additional Sub Court, Salem. The respondents filed the said suit against the petitioner and three others for partition and permanent injunction restraining them from alienating the suit property. The 4th defendant filed the written statement on 25.04.2011, which was adopted by petitioner and other defendants. The petitioner filed additional written statement on 31.07.2013. Trial commenced. Both the petitioner and respondents let in evidence and closed their side. The suit was posted for arguments. At that stage, the petitioner filed two applications in I.A.Nos.82 and 81 of 2015 to recall D.W.2 to mark the certified copy of the documents and to reopen the case. According to the petitioner, the documents were not filed when the proof affidavit was filed. Now the certified copies have been obtained and it is necessary to recall D.W.2 to mark the documents and to reopen the case.

4.The 2nd respondent filed counter affidavit in both the applications, which was adopted by the first respondent and opposed the said applications on the ground that petitioner has not furnished any details of the documents, not stated about the nature of the documents as to how they are relevant to the issue and why the petitioners have not filed the documents earlier.

5.The learned Judge considering the averments in the affidavits, counter affidavits and dismissed both the applications holding that the suit is of the year 2009 and applications are filed only to drag on the proceedings.

6.Against the said order of dismissal dated 02.03.2015 made in I.A.Nos.82 and 81 of 2015 in O.S.No.196 of 2009, the petitioner has come out with the present two Civil Revision Petitions.

7.Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

8.From the impugned order, it is seen that the learned Judge has dismissed both the applications on the ground that the suit is of the year 2009 and applications have been filed only to drag on the

proceedings. The said reason is not valid reason. The petitioner has filed certified copy of the settlement deed dated 12.01.2009 in the typed set of papers. The parties must be given an opportunity to substantiate their case even after evidence is closed. If the documents sought to be marked will assist the Court in arriving at a correct conclusion and deciding the issue completely, the parties must be given an opportunity. In the present case, the suit filed by the respondents is for partition and the petitioner has filed the certified copy of the documents. In view of the above facts, the impugned order of the learned Judge is set aside and I.A.Nos.82 and 81 of 2015 are allowed. The learned Judge is directed to permit the petitioner to mark the documents filed in the typed set of papers which were filed in support of the present Civil Revision Petitions.

9.In the result, both the Civil Revision Petitions are allowed.

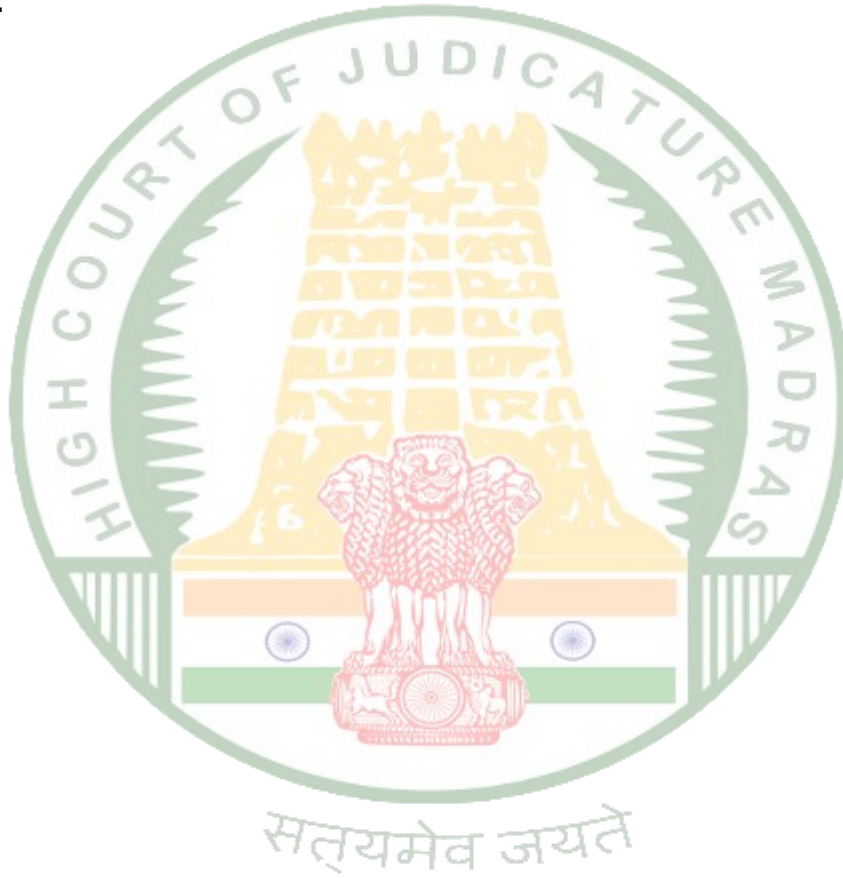
No costs. Consequently, connected Miscellaneous Petition is closed.

01.02.2018

Index: Yes/No
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To

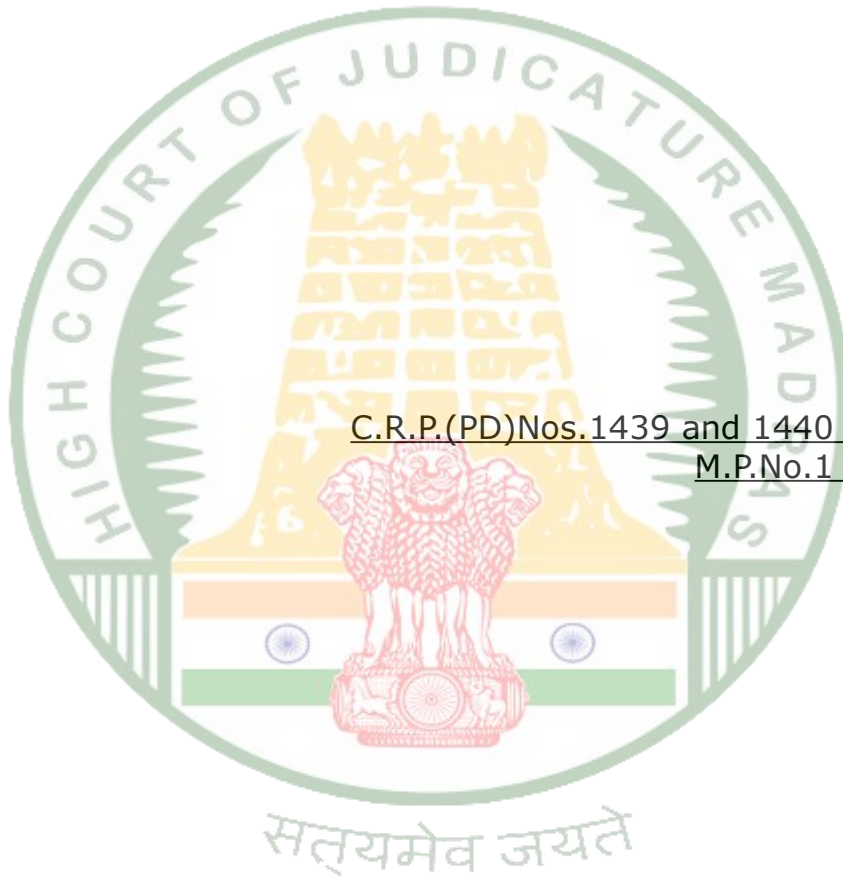
The II Additional Sub Judge,
Salem.



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V.M.VELUMANI,J.

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