

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.4707 & 4708 of 2014
& M.P.No.1 of 2014

A.Ambalavanan

.. Petitioner in both
C.R.Ps.

Vs.

1.Madarasa Dawoodia Arabic College
S.P.Agraharam, Erode
Rep. By its President
K.K.S.A.Sheik Mohideed

M.Alagappan (died)

2.A.Tirunavukkarasu
3.Dr.M.Thirugnanasambandam
4.A.Manivasam

.. Respondents in
both C.R.Ps.

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the fair and decretal orders dated 26.02.2014 made in I.A.Nos.34 & 35 of 2014 in O.S.No.368 of 2012 on the file of the I Additional District Munsif Court, Erode.

For Petitioner : M/s.R.Shase
for Mr.M.Guruprasad

For R1 : Mr.R.Siddharth
for M/s.Veera Suresh

For R2 to R4 : No appearance

COMMON ORDER

These Civil Revision Petitions are filed to set aside the fair and decretal orders dated 26.02.2014 made in I.A.Nos.34 & 35 of 2014 in O.S.No.368 of 2012 on the file of the I Additional District Munsif Court, Erode.

2.In both the Civil Revision Petitions, parties are one and the same and issues are interlinked. Therefore, disposed of by this common order.

3.The petitioner is the third defendant, first respondent is the plaintiff and respondents 2 to 4 are the defendants 2, 4 and 5 in O.S.No.368 of 2012 on the file of the I Additional District Munsif Court, Erode (formerly O.S.No.91 of 2008 on the file of the Principal Subordinate Judge (Wakf Tribunal), Erode). The first respondent filed the said suit against the petitioner, respondents 2 to 4 and one M.Alagappan for recovery of possession and damages. The petitioner filed written statement on 01.12.2009, additional written statement in the month of June, 2013 and is contesting the suit. The first respondent filed reply statement on 15.07.2013. Trial commenced. Evidence on behalf of the first respondent was let in and when the suit was posted for cross examination of PW1, there

was no representation on behalf of the petitioner and other defendants. The evidence of P.W.1 was closed.

4.The petitioner filed present I.A.No.34 of 2014 to reopen P.W.1's evidence for further cross examination and I.A.No.35 of 2014 to recall P.W.1 for further cross examination. According to the petitioner, he filed a memo for a direction to the first respondent to produce the documents mentioned therein. The first respondent did not produce the documents. The petitioner applied for certified copy of the documents and obtained the same. In view of the same, there was some delay in cross examination of P.W.1. The Court closed the evidence of P.W.1 on 04.11.2013 and adjourned to 11.11.2013 for defendants side evidence. The petitioner has got valid defence and he must be given an opportunity for further cross examination of P.W.1.

5.The first respondent filed separate counter affidavits and submitted that trial commenced on 06.02.2013 and petitioner is dragging on the proceedings by filing petition after petition and memo seeking production of unnecessary documents. The first respondent furnished the details of "A" diary from 06.02.2013 to 24.01.2014 to show the attitude of the petitioner. According to the

first respondent, the petitioner is squatting on the suit property by paying paltry rent and wants to delay the disposal of the suit and prayed for dismissal of the applications.

6.The learned Judge, considering the averments in the affidavits, counter affidavits and materials on record, dismissed the applications by two orders both dated 26.02.2014, holding that the petitioner has filed applications only to drag on the proceedings.

7.Against the said orders of dismissal dated 26.02.2014 made in I.A.Nos.34 & 35 of 2014 in O.S.No.368 of 2012, the petitioner has come out with the present two Civil Revision petitions.

8.Heard the learned counsel for the petitioner as well as the first respondent and perused the materials available on record. Though notice was served on the respondents 2 to 4 and their names are printed in the cause list, there is no representation either in person or through counsel.

9.From the impugned orders and materials on record, it is seen that on 22.04.2013, P.W.1 was present and the suit was posted for further evidence of P.W.1 by 29.04.2013 when the

Petitioner and other defendants reported no further cross examination of P.W.1. Subsequently on 06.06.2013, the evidence on behalf of the first respondent/plaintiff was closed and the suit was adjourned twice for defendants' side evidence. On 25.06.2013, the petitioner filed I.A.No.456 of 2013 to receive the additional written statement. The said I.A was allowed on 02.07.2013. The first respondent filed reply statement on 15.07.2013. The petitioner filed application in I.A.No.511 of 2013 for recalling P.W.1. On 21.08.2013, the said application was allowed and petitioner took more than 10 adjournments for cross examination of P.W.1. On all the hearings, P.W.1 was present. On 21.10.2013, the petitioner filed a memo for a direction to the first respondent to produce the documents. The counsel for the first respondent made an endorsement that said documents are not necessary to decide the issue. The said memo was closed on 21.10.2013 and suit was adjourned to 04.11.2013 for defendants' side evidence. The defendants took 6 adjournments to let in evidence on their behalf. On 02.01.2014, the petitioner filed present applications to reopen and recall P.W.1.

10.The learned Judge, considering the above facts and the fact that memo was closed on the endorsement made by the

counsel for the first respondent that those documents are not necessary to decide the issue in the suit and liberty was given to petitioner to take adverse inference, but the petitioner did not cross examine P.W.1, dismissed the applications. The learned Judge, considering the list of documents mentioned in the memo held that except title deeds of the first respondent, all other documents ought to have been in the possession of petitioner who is the son of first defendant. The learned Judge held that instead of filing application under Order VIII Rule 1A(iii) of C.P.C, the petitioner filed the present applications which shows the intention of the petitioner is to drag on the proceedings. The learned Judge has properly appreciated the above facts and dismissed both the applications. I do not find any irregularity or illegality warranting interference by this Court with the orders of the learned Judge dated 26.02.2014 made in I.A.Nos.34 & 35 of 2014 in O.S.No.368 of 2012.

11. In the result, these Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

03.01.2018

Internet:: Yes/No

Index:: Yes/No

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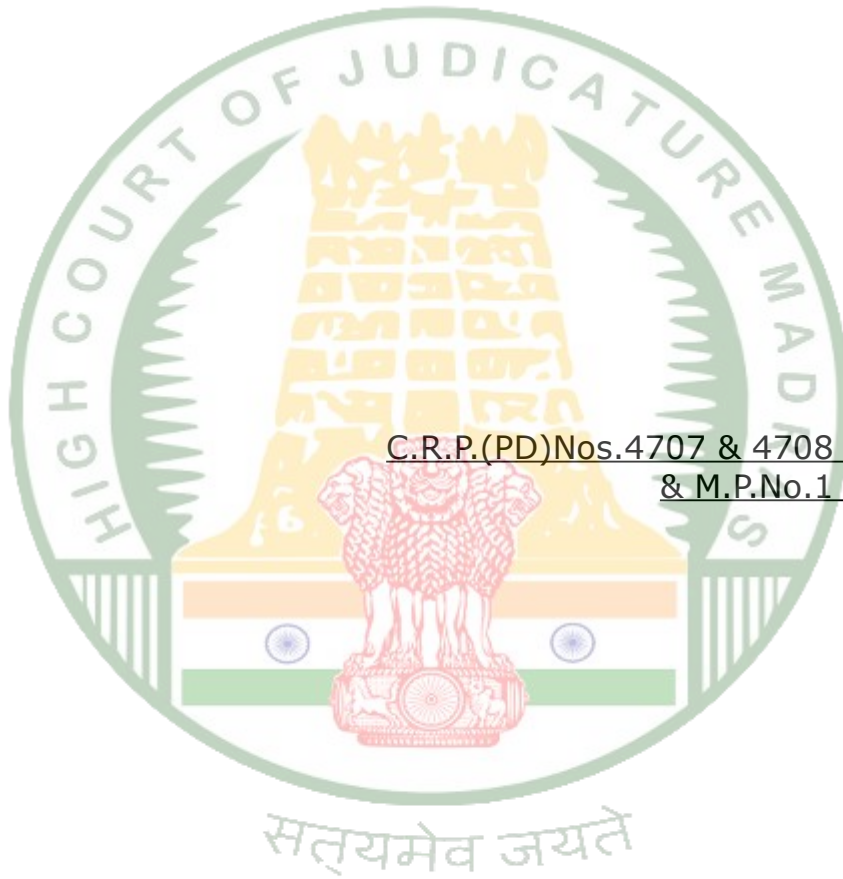
The I Additional District Munsif,
Erode.



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V.M.VELUMANI,J.

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