

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP(PD)No.529 of 2018
and
CMP.No.2759 of 2018

N.Dharman

.. Petitioner

Vs.

1.Raghunathan

2.Mahendiran

3.Easwari @ Samundeeswari

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Constitution of India against the fair and decreetal order dated 13.12.2017 passed in I.A.No.1201 of 2017 in O.S.No.192 of 2013 by the learned Additional District Munsif Court at Tirupattur.

For Petitioner : Mr.J.Michael Visuvasam

For R1 : No appearance

For R2 and R3 : Mr.K.Velayutha Raja

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ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 13.12.2017 passed in I.A.No.1201 of 2017 in O.S.No.192 of 2013 by the Hon'ble Additional District Munsif Court at Tirupattur.

2.The petitioner/plaintiff has filed the suit in O.S.NO.192 of 2013 to declare the sale deed as null and void. The aforesaid suit is posted for trial and the plaintiff was examined as PW1 and the defendants side was also examined. Both sides evidences were concluded and posted for arguments. At this stage, the petitioner has filed the instant Interlocutory Application in I.A.No.1201 of 2017 to reopen the above case for examination of further witnesses on the petitioner's side. The learned Additional District Munsif, Tirupattur erroneously dismissed the said application, without appreciating the case of the petitioner.

3.The learned counsel appearing for the petitioner would submit that the respondents have not filed any objection, before the trial Court for reopening the evidence. Therefore, no prejudice would be caused by allowing the application to reopen and recalled the witnesses on the side of the petitioner.

4.Per contra, the learned counsel for the respondents would submit that the petitioner has not chosen to file an application at the time of the evidence of the plaintiff. The evidence on the side of the plaintiff and respondents are closed. Therefore, the trial Court has rightly dismissed the application.

5.By consent of the parties this petition is taken up for hearing.

The fact remains in the present case is that after the evidence of both the parties are concluded and posted for arguments, at this stage, the petitioner/plaintiff filed an application to reopen the evidence on his side and the same cannot be invoked to fill up the lacuna in the evidence, which was already let in by the witnesses.

6.In the decision in **2016 (5) CTC 555**, in the case of **Ram Rati V. Mange Ram (D)** through L.Rs., the Hon'ble Supreme Court has dealt with a case where the Lower Court in exercise of its discretion had allowed the application filed by the respondent before the Hon'ble Supreme Court. Even in the said Judgment, the Hon'ble Supreme Court has observed that under Order 18 Rule 17 C.P.C., power cannot be invoked to fill up the lacuna in the evidence which was already let in by the witnesses.

7.It is further reiterated that the discretionary power conferred upon the Court should be exercised sparingly in appropriate cases and that the Court should see that the trial is not unnecessarily protracted because of recall of witnesses. It is also held as a principle that it is not open to recall the witnesses for further elaboration on left out points.

8.In the light of the above said facts and the decision cited

supra, the order of the Court below is confirmed and hence, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

09.03.2018

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Speaking/Non-Speaking order

Index :Yes/No

Internet:Yes/No

To

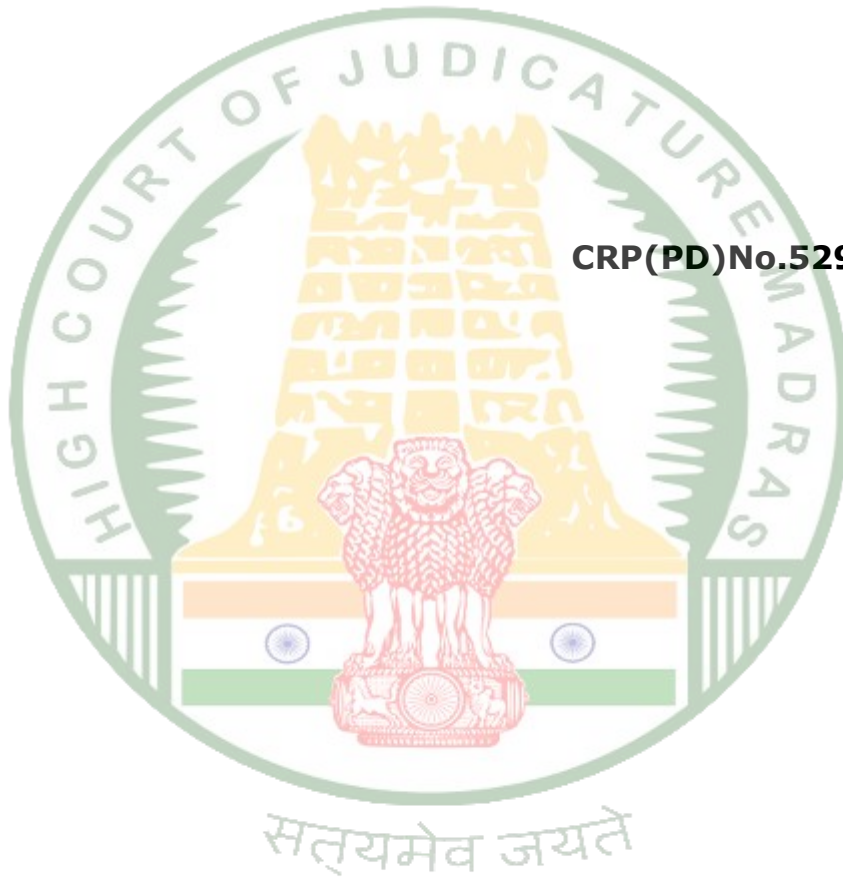
The Additional District Munsif,
Tirupattur.



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D. KRISHNAKUMAR J.,

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