

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD) Nos.4547 to 4549 of 2013
M.P.No.1 of 2013

1.Meenatchi Finance
Rep.by its Managing Partner
Thambiraja
S/o Velupillai, Hindu
Office at No.1-A, Bharathi Street,
Tindivanam, Tamil Nadu

2.Meenatchi Credit
Rep.by its Managing Partner
Thambiraja
S/o Velupillai, Hindu
Office at No.1-A, Bharathi Street,
Tindivanam, Tamil Nadu

... Petitioners in all CRPs

Vs.

1.Dr.Seema Devi
2.Dr.Niveditha
3.Dr.Devasenapathy
4.S.Velumani
5.Venugopal
6.Usha
7.Anandhi
8.Babu
9.Padmavathi
10.K.R.Deivanai
11.S.Punithavathi
12.Venkataraman
13.Dr.Daljit singh
14.Dr.Alok Pandey
15.Shanmugam
16.Somasundaram

...

Respondents in all CRPs

COMMON PRAYER : Civil Revision Petitions filed under Article 227 of the Constitution of India against the order dated 26.07.2013 in I.A.Nos.153, 158 & 159 of 2013 in O.S.No.366 of 2006 on the file of the III Additional District Munsif, Puducherry.

In all CRPs

For Petitioners : Ms.AL.Ganthimathi
For Respondents : Mr.Prakash Adiapadam
for R1 & R2

R3 to R16 Dismissed
vide order of this court
dated 12.08.2015.

COMMON ORDER

Civil Revision Petitions are filed against the order dated 26.07.2013 made in I.A.Nos.153, 158 & 159 of 2013 in O.S.No.366 of 2006 on the file of the III Additional District Munsif, Puducherry

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

3. The petitioners are defendants 10 & 11, respondents 1 & 2 are plaintiffs and the respondents 3 to 16 are defendants 1 to 9 & 12 to 16 in the suit in O.S.No.366 of 2006 on the file of III Additional District Munsif, Pondicherry.

4. Originally, the respondents 1 & 2 filed the above suit for declaration of their title in respect of Item Nos.1 & 2 of the suit schedule property before the Principal Sub Court, Pondicherry which was numbered as O.S.No.811 of 1996. The petitioners filed written statement on 18.08.1998 and are contesting the suit. Subsequently, the suit was transferred to III Additional District Munsif Court, Pondicherry and re-numbered as O.S.No.366 of 2006. Trial commenced. Parties let in evidence and closed their side. The suit was posted for arguments. The learned counsel for the respondents 1 & 2 made submissions on 18.01.2013 and submitted their written arguments on the same day. When the suit was posted for arguments on behalf of the defendants, the petitioners who are the defendants 10 & 11 filed present three applications viz.

(i) I.A.No.153 of 2013 to condone the delay in filing the list of documents and accord reception of the same under Order VIII Rule 1-A(2) r/w Section 151 CPC

(ii) I.A.No.158 of 2013 to re-open the defendants side for exhibiting the documents referred in I.A.No.153 of 2013 u/s. 151 CPC.

(iii) I.A.No.159 of 2013 to recall the DW1 to mark the documents referred in I.A.No.153 of 2013 under XVIII Rule 12 r/w Section 151 CPC.

5. According to the petitioners, the suit properties were sold to them by the third respondent/first defendant by two sale deeds dated 05.06.1995 and 07.06.1995. The petitioners were under the impression that those documents were filed in the present suit. But now only they came to know that the said documents were filed in the other connected suit in O.S.No.322 of 1997 which was filed for recovery of money, on the file of Principal Sub Court, Pondicherry. Those documents are vital documents to prove their case and prayed for allowing the applications.

6. The respondents 1 & 2 filed separate counters and contended that the suit properties were sold to them by the third respondent. The sale deeds now put forth by the petitioners are subsequent to the sale in favour of the respondents 1 & 2 which are invalid documents. The contention of the petitioner that those documents were marked in another suit in O.S.No.322 of 1997 is not correct. Those documents are not marked in the said suit. The petitioners sought permission to mark the preliminary decree and

final decree in O.S.No.322 of 1997 and execution petition E.P.No.126 of 2001. However, they have not taken any steps to file and mark those documents. Only Court has power to recall any witness as per Order XVIII Rule 17 CPC and petitioners cannot seek to recall any witness according to their whims and fancies.

7. The learned Judge, considering the averments in the affidavit, counter affidavit, materials on record and judgments relied on by the parties, dismissed all the three applications.

8. Against the said order of dismissal dated 26.07.2013 made in I.A.Nos.153, 158 & 159 of 2013 in O.S.No.366 of 2006, the petitioners have filed the present Civil Revision Petitions.

9. Heard the learned counsel for the petitioners as well as respondents 1 & 2 and perused the materials available on record.

10. The petitioners have mentioned the sale deeds in the written statement filed by them in the year 1998 but they have not filed the said documents alongwith the written statement. They have also not taken any steps to file the said document when DW1 was examined on their behalf. The contention of the petitioners

that they were under the impression that the said documents were already filed in the present suit is without merits. When the petitioners, through DW1 filed proof affidavit, at that time itself, they ought to have taken steps to file the said sale deeds. The only contention of the petitioners that the said documents were filed in O.S.No.322 of 2001 is proved to be false. The sale deeds were not marked in the said suit. The petitioners have not given any reason for not filing the original documents and in whose custody the original sale deeds are.

11. Re-calling any witness as per Order XVIII Rule 17 CPC is the discretion of the Court. The said discretion has to be exercised judicially. The learned Judge, considering the reason given by the petitioners for re-opening, recalling DW1 and marking the documents, rejected the reasons given by the petitioners and dismissed all the three applications. The learned Judge has exercised his discretion properly and dismissed the application by considering all the materials on record in proper perspective by giving cogent and valid reasons. There is no illegality or irregularity in the orders impugned in these revisions warranting interference by this Court.

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

13. Both the learned counsel for the petitioners as well as respondents 1 & 2 submitted that already the suit is posted for arguments and judgment. In view of the said submission, the III Additional District Munsif, Puducherry is directed to dispose of the suit in O.S.No.366 of 2006, at the earliest, in any event, not later than two months from the date of receipt of a copy of this order.

21.03.2018

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Index : Yes/No

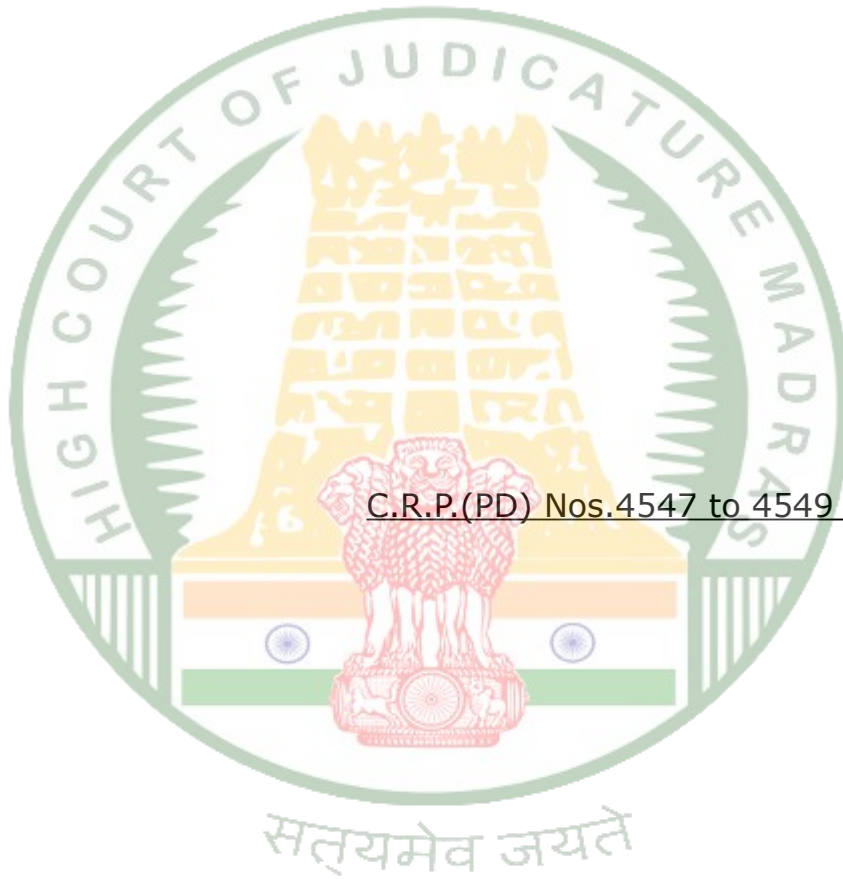
To

The III Additional District Munsif,
Puducherry.

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V.M.VELUMANI, J.

rgr



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