



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(PD) (MD)Nos.1678 and 1679 of 2018
and
C.M.P.(MD)No.7319 of 2018

A.Neelvathy, W/o.N.Annadurai,
Rep. by her Power Agent A.Ashok

... Revision Petitioner in both CRPs/
Respondent/Defendant

Vs

T.Tamilkumaran

... Respondent in both CRPs/
Petitioner/Plaintiff

PRAYER in C.R.P.(PD) (MD)No.1678 of 2018 : Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 10.01.2018 in I.A.No.261 of 2017 in O.S.No.183 of 2014 on the file of the Principal District Judge, Trichy.

PRAYER in C.R.P.(PD) (MD)No.1679 of 2018 : Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 10.01.2018 in I.A.No.262 of 2017 in O.S.No.183 of 2014 on the file of the Principal District Judge, Trichy.

For Petitioner : Mr.Raguvaran Gopalan
for K.Prabhakar

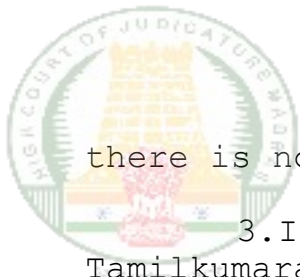
For Respondent : No appearance
(in both CRPs)

COMMON ORDER

The defendant in O.S.No.183 of 2014 on the file of the learned District Judge, Trichy is the revision petitioner herein. It is a suit for specific performance. In the said suit, the respondent herein filed I.A.Nos.261 and 262 of 2017. The first I.A., is for reopening his side and the second I.A., is for impleading one Ashok. Both the I.As., were allowed on 10.01.2018. These orders are challenged in these two Civil Revision Petitions.

<https://hcservices.ecourts.gov.in/hcservices/>

2.Heard the learned counsel for the revision petitioner and



there is no representation on the side of the respondent.

3.It is seen that the suit was filed by the respondent Tamilkumaran. Originally, the revision petitioner was shown as the first defendant while the said Ashok was shown as the second defendant. After the plaint was returned, Ashok was deleted from the array of parties. The revision petitioner was shown as the principal of the said Ashok. Issues were framed and the matter was taken up for trial. The respondent herein was examined as P.W.1. He was also cross examined. On 05.04.2017, the plaintiff did not come forward to produce further witnesses. Therefore, his side was closed. Thereafter, the present I.As., were taken out.

4.This Court had a look at the orders impugned in these Civil Revision Petitions. The Court below noted that eventhough P.W.1 entered the witness box and proof affidavit was filed, he was not cross examined. Therefore, the Court below proceeded on the premise that the trial was yet to commence.

5.The approach of the Court below is clearly erroneous. It is also contrary to the fact on record. It is obvious that the plaintiff examined himself as P.W.1 and he was also cross examined. On 05.04.2017, since he did not produce any further witnesses, his side was closed. It is admitted even in the affidavit filed in support of the I.A., that the trial was already commenced. The Court below erred in assuming that the trial has not yet commenced. The requirement set out in the proviso to Order 18 Rule 17 C.P.C. is patently is not satisfied in this case.

6.Accordingly, the orders impugned in these Civil Revision Petitions are set aside and these Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-III)

To

The Principal District Judge, Trichy.

+ 1 CC TO Mr.K.PRABHAKAR, ADVOCATE IN SR No. 93528

+ 2 CC TO Mr.N.SHANMUGA SELVAM, ADVOCATE IN SR No. 92650 & 92649

PNN

TE/VR/SAR-3 : 21/12/2018 : 2P/5C

ORDER MADE IN
C.R.P. (PD) (MD) Nos.1678 and 1679 of 2018
and C.M.P. (MD) No.7319 of 2018
29.10.2018