

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	11.07.2019
Pronounced On	25.07.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN****C.R.P.(PD).No.1563 of 2015****and****M.P.No.1 of 2015**

E.Gandhimathi

.. Petitioner

vs

R.M.Velusamy

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal orders dated 19.08.2014 in I.A.No.49 of 2014 in O.S.No.284 of 2008 on the file of the Additional District Munsif Court, Tiruppur.

For Petitioner : Mr.C.R.Prasanan

For Respondent : Mr.S.Doraisamy

ORDER

The present Civil Revision Petition has been filed to set aside the fair and decretal order dated 19.08.2014 passed by the Additional District Munsif Court, Tiruppur in I.A.No.49 of 2014 in O.S.No.284 of 2008.

2.By the impugned order, the court has allowed the respondent/defendant to file additional documents under Order 8 Rule 1-A (3) of the Code of Civil Procedure.

3.The petitioner is the plaintiff in O.S.No.284 of 2008 before the District Munsif Court, Tirupur. After written statement was filed in the year of October 2008, the 2nd defendant/respondent herein filed I.A.No.49 of 2014 under Order 8 Rule 1(A)(3) of CPC to introduce additional documents which are the copy of the plaint in O.S.No.222 of 2010, affidavit and counter affidavit and order passed in I.A.No.182 of 2011 in O.S.No.222 of 2010. Petitioner objected to introduce the additional documents.

4.The said I.A.No.49 of 2014 was allowed by the Additional District Munsif Court, Tirupur.

5.While passing the above order the learned District Munsif has observed that relevancy or admissibility of the documents can be decided later the time of trial. The learned District Munsif relied on the decision of the Hon'ble Supreme Court in **Bibin Shantilal Panchal Vs State of Gujarat and Another** 2001 (3) SCC 1 to

<http://www.judis.nic.in> come to the above conclusion. In the said case, it was held that

whenever on objections are raised during evidence relating to admissibility of any material or item of oral evidence, it can be postponed to the stage of trial by marking the documents subject to proof, relevancy and admissibility. If the court finds the objections raised sustainable, such evidence can be excluded.

6. Aggrieved by the same, the present Civil Revision Petition has been filed by the petitioner/plaintiff.

7. The learned counsel for the petitioner submits that the court has allowed the said application for marking these documents by allowing the same and therefore submits that the order passed by the Additional District Munsif Court, Tirupur is liable to be interfered.

8. The learned counsel for the petitioner further submits that order of the learned Additional District Munsif, Tirupur is not reasoned to allow the application stating that the relevancy documents are not required to be examined at the stage of introduction of documents by way of the application.

9.The learned counsel for the petitioner also submits that the plaint and the written statement in O.S.No.222 of 2010 are not relevant facts and issue subsequent to the suits.

10.The learned counsel for the petitioner relied on the following cases:-

- i. **Punjab & Sind Bank vs Dewa Properties Limited**, 2019 (3) CTC 737
- ii. **P.Jayarama Pillai vs K.Balakrishnan and Others**, 2017 (1) MWN (Civil) 67.

11.I have considered the arguments advanced by the learned counsel for the petitioner and the respondent. In this case the documents were allowed to be introduced vide the impugned order are the pleadings in the collateral proceedings initiated by the respondent in O.S.No.222 of 2010. The documents are the attested copy of the plaint filed by the respondent, written statement filed by the petitioner herein and affidavit and petition filed in I.A.No.82 of 2011 in O.S.No. 222 of 2010 by the petitioner herein.

12.As per Order 8 Rule 1-A (3) of the Code of Civil Procedure, where a defendant basis his defence upon a document and relies upon any document in his possession or power, in support of his defence or claim for set off or counterclaim, he shall enter such document in the list of documents and shall produce it in court along with the written statement. Under sub-clause 3 of Rule 1-A (3), the defendant may obtain leave of the court to produce those document which ought to have been produced under sub-clause (1) at the time of filing of the written statement but could not be produced earlier.

13.It is evident from the description of the document for which leave was obtained by the respondent are documents in the collateral proceeding subsequent to the suit filed by the petitioner in O.S.No.284 of 2008 and are subsequent to written statement filed by the respondent herein.

14.Leave under Order 8 Rule 1-A (3) of the Code of Civil Procedure cannot be granted in respect of documents which were neither in existence nor in contemplation of either the petitioner/plaintiff or the respondents/defendant's either at the time

of filing of the suit or at the time of filing of the written statement. Therefore, the court has wrongly exercised the leave under the provisions of Order 8 Rule 1-A (3) of the Code of Civil Procedure.

15. Therefore, I am of the view that the order passed by the lower court requires to be interfered. Consequently, I am of the view that the order passed by the said court is liable to be set aside and is accordingly set aside.

16. It is noticed that the suit is of year 2008 and has not proceeded thereafter in view of the pendency of the present Civil Revision Petition.

17. The District Munsif, Tirupur is therefore directed to dispose the O.S.No 284 of 2008 without reference to the documents allowed to be introduced vide impugned order in I.A No.49 of 2014 within a period of six months from the date of receipt of a copy of this order.

18. At the same time, the rights of the respondent to rely on these documents in the evidence in accordance with the provisions of the Indian Evidence Act, 1872 r/w sub-clause (4) of Rule 1-A if

permissible is left open to be decided by the Additional District Munsif, Tirupur at the time of trial.

19.The present Civil Revision Petition stands allowed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

25.07.2019

Index : Yes/No
Internet : Yes/No
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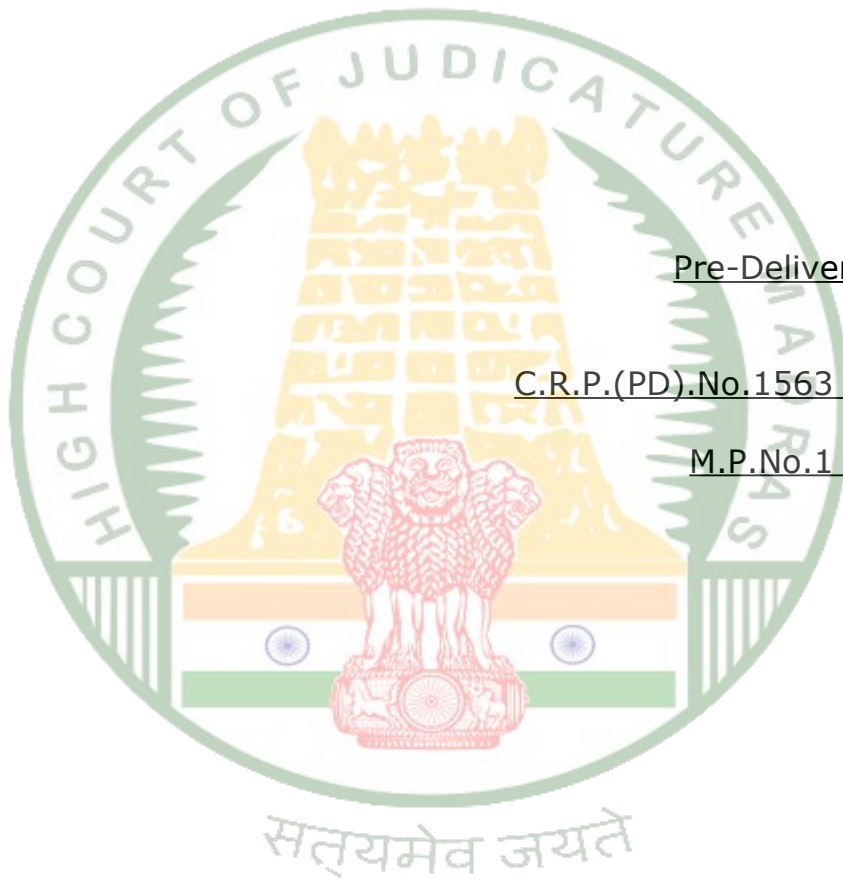
- 1.The Additional District Munsif Court,
Tiruppur.
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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C. SARAVANAN J.,

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Pre-Delivery order
in

C.R.P.(PD).No.1563 of 2015
and
M.P.No.1 of 2015

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