

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.02.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(PD)Nos.598 & 599 of 2019 and
C.M.P.No.3994 of 2019

T.Kasi

..

Petitioner
[in both CPRs]

versus

K.R.Rajagopal [Died]
1.Parvathavarthini
2.R.Kalaichezhiyan
3.R.Sathish Kumar

..

Respondents
[in both CPRs]

COMMON PRAYER: Civil Revision Petitions have been filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 26.10.2018 made in I.A.Nos.270 and 271 of 2018 in O.S.No.38 of 2011 respectively on the file of the Sub Court, Arani.

For Petitioner : Mr.B.Jawahar

COMMON ORDER

WEB COPY

These Civil Revision Petitions have been filed against the common order dated 26.10.2018 made in I.A.Nos.270 and 271 of 2018 in O.S.No.38 of 2011 on the file of the Sub Court, Arani, in dismissing the applications filed to reopen and recall the witnesses, namely, PW1 to PW4.

2. Heard the learned counsel appearing for the petitioner and also perused the materials available on record.

3. The plaintiff has filed the suit for declaration that the sale deed executed by the defendant on the ground of fraud etc. The suit is of the year 2011, the original suit was listed on 05.08.2015, on that day the defendant failed to appear, was set *ex parte* and thereafter, the *ex parte* order was set aside on 01.04.2016. However, PW1 was examined, as he was not cross examined, his evidence was closed on 15.09.2016. Though PW1 was examined on 23.06.2016, till 15.09.2016 he was not cross examined and thereafter, PW2 was examined in chief and posted for cross examination on 10.01.2017. From 10.01.2017, despite several opportunities, he was not cross examined till 11.09.2017 and hence, his evidence was also closed. Thereafter, other witnesses were examined, namely, PW1 to PW4.

4. At this stage, the defendant has filed applications to reopen the case and to recall the above witnesses, the above said applications were allowed by the trial Court on 27.11.2017. Despite an opportunity being given by the Court to cross examine the witnesses, PW1 was cross examined only in part and from 27.11.2017 to 08.03.2018. Thereafter, as the defendant has not

chosen to continue his cross examination of PW1, once again case was posted on 14.03.2018 and on 09.04.2018, PW2 was present, however he was not cross examined, therefore his evidence was closed only on 05.06.2018. However, PW3 was cross examined and thereafter, PW4 was made her appearance after coercive steps on 26.09.2018. Despite the presence of PW4, the revision petitioner has not cross examined PW4.

5. The above applications have been taken out once again to reopen the case and recall PW1 and 4 conduct of the revision petitioner makes it clear that the defendant has deliberately failed to cross examine the witnesses, despite several opportunities available to him. Having given an opportunity in the earlier occasion to cross examined the witnesses, several months and years together, he has not cross examine the witnesses and therefore, now he cannot contend that his right will be affected. The dates and events narrated above will make it clear that the defendant infact has used the proceedings before this Court at his whims and fancies.

6. The litigant, who taking undue advantage and failed to avail the opportunity to cross examine the witnesses and dragging the matters years together have no equity in the eye of law to seek further opportunity for cross examination. The conduct of the revision petitioner makes it very clear that

his conduct in delaying the matters is nothing but deliberate and infact he is not interested in cooperating with the trial. When such is the conduct of the litigant, this Court is of the view that no leniency can be shown to him under the pretext of granting an opportunity to cross examine the witnesses. No doubt the procedure law is meant not to destroy the substantive right of the party but at the same time this Court also cannot ignore the fact that the procedure has to be followed strictly to ultimate justice. When several opportunities were given, he has not utilized, therefore this Court is of the view that the revision petitioner has no right to cross examine the witnesses. Hence, the order of the trial Court dismissing the applications does not require any interference.

7. With these observations, these Civil Revision Petitions are dismissed. The trial Court is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

WEB COPY

15.02.2019

Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes

sri

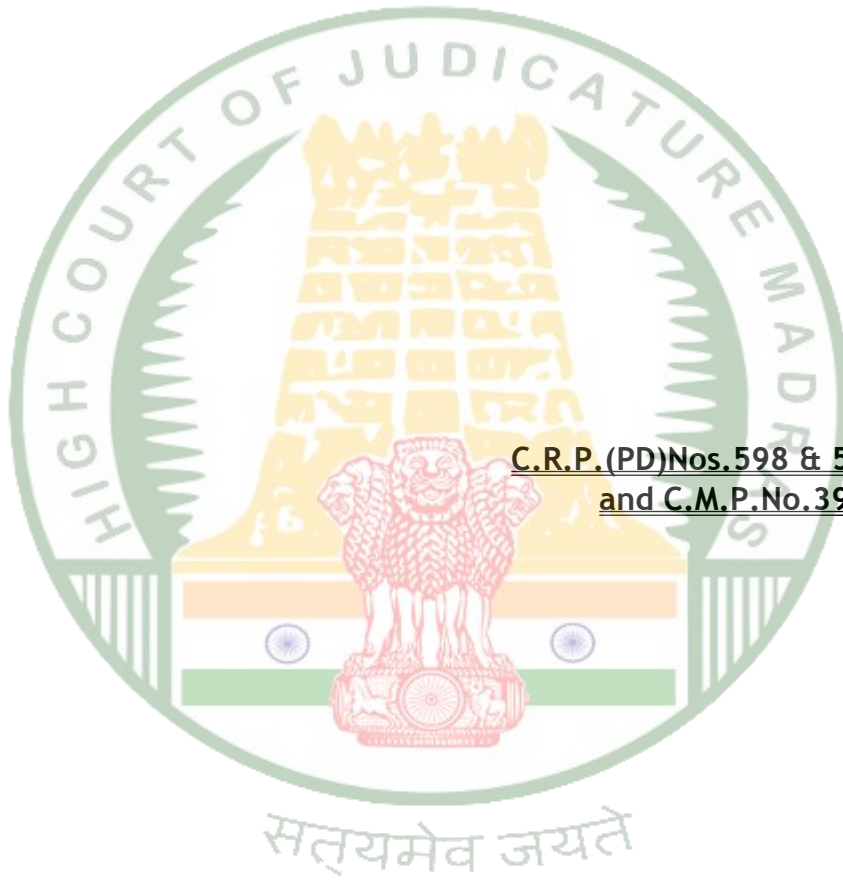
To

The Subordinate Judge,
Arani.



WEB COPY

N.SATHISH KUMAR, J.,
sri



C.R.P.(PD)Nos.598 & 599 of 2019
and C.M.P.No.3994 of 2019

WEB COPY

15.02.2019