

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD).Nos.903, 904, 905, 907 and 908 of 2019

&

C.M.P.Nos.5913, 5916 of 2019

C.R.P.No.903 of 2019:

A.S.K.Sivakumar

...Petitioner

Vs

1.D.Rajesh Jain

2.K.Vinoth

3.U.Rajesh Kumar

... Respondents

C.R.P.No.904 of 2019:

A.S.K.Sivakumar

...Petitioner

Vs

1.D.Rajesh Jain

2.K.Vinoth

3.U.Rajesh Kumar

... Respondents

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C.R.P.No.905 of 2019:

A.S.K.Sivakumar

...Petitioner

Vs

1.Darmichand (dead)

2.D.Rajesh Jain

3.D.Surij Devi

4.R.Kiran Bai

5.K.Asha Bai

6.U.Suresh Jain

7.D.Sharmil

... Respondents

C.R.P.No.907 of 2019:

A.S.K.Sivakumar

...Petitioner

Vs

1.D.Rajesh Jain

2.K.Vinoth

3.U.Rajesh Kumar

... Respondents

C.R.P.No.908 of 2019:

A.S.K.Sivakumar

...Petitioner

Vs

1.Darmichand (dead)

2.D.Rajesh Jain

3.D.Surij Devi

4.R.Kiran Bai

5.K.Asha Bai

6.U.Suresh Jain

7.D.Sharmil

... Respondents

Prayer in C.R.P.No.903 of 2019: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order of the learned District Munsif, Vellore, in I.A.No.278 of 2018 in O.S.No.364 of 2005, dated 02.02.2019.

Prayer in C.R.P.No.904 of 2019: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order of the learned District Munsif, Vellore, in I.A.No.135 of 2018 in O.S.No.364 of 2005, dated 02.02.2019.

Prayer in C.R.P.No.905 of 2019: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal

order of the learned District Munsif, Vellore, in I.A.No.1010 of 2018 in O.S.No.1984 of 2004, dated 02.02.2019.

Prayer in C.R.P.No.907 of 2019: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order of the learned District Munsif, Vellore, in I.A.No.136 of 2018 in O.S.No.364 of 2005, dated 02.02.2019.

Prayer in C.R.P.No.908 of 2019: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order of the learned District Munsif, Vellore, in I.A.No.1011 of 2018 in O.S.No.1984 of 2004, dated 02.02.2019.

For Petitioner : Mr.R.Srinivas

सत्यमेव जयते

COMMON ORDER

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The above Civil Revision Petitions are filed challenging the dismissal of the applications filed for reopening, recalling and marking the documents. The facts in brief preceeding the filing of the Civil

Revision Petitions are as follows:

2.The 1st respondent herein along with his father one Dharmichand had filed a suit O.S.No.1984 of 2004 directing the redelivery of the demised premises stating that they had been wrongly dispossessed from the petition premises. This was followed by another suit by the 1st respondent herein in O.S.No.364 of 2005 wherein the relief claimed was similar to the claim in the earliest suit and that the defendants should perform their obligation under an agreement of compromise entered into between the 1st respondent and the revision petitioner herein under the agreement of compromise dated 15.12.2003.

3.In the suit O.S.No.364 of 2004, the revision petitioner had filed a written statement inter alia contending that the lease agreement which is the subject matter of the suit and the compromise decree in O.S.No.1984 of 2004 are forged and fabricated documents. The suit appears to have continued over several years ultimately resulting in Civil Revision Petition being moved under the provisions of Order II Rule 2 of the Code of Civil Procedure by the revision petitioner

herein which application was dismissed by an order of this Court dated 05.11.2013 wherein this Court had passed the following order:

"2.Admittedly, the plea sought to be raised by the petitioner is not inconsistent and contrary to the pleas raised on facts. Even the Court below has observed that the plea sought to be raised being a legal one, can be framed as an additional issue, if necessary. However, taking into consideration of the fact that the matter reached the part-heard stage and in order to avoid further delay, this Court is of the view that in the interest of justice, the trial Court will have to be directed to frame an additional issue as to whether the suit is barred under Order 2 Rule 2 of Code of Civil Procedure. After framing such an issue, the Additional District Munsif, Vellore, is directed to proceed with the trial and dispose of the suit in O.S.No.364 of 2005 within a period of six months from the date of receipt of a copy of this Order. It is well open to the parties to make all their contentions on the scope and applicability of order 2 Rule 2 before the Trial Court. The trial Court, while deciding the suit, will have to answer said issue along with other issues of facts and law. The Civil Revision Petition is disposed of accordingly. No costs. Consequently, connected Civil Miscellaneous Petition is also closed."

4.From a reading of the impugned order it appears that after the Civil Revision Petition had been disposed of and the records had been received by the Court on 29.01.2016 the suit was dismissed for default on 11.02.2016 and thereafter restored by order in I.A.No.479 of 2016 on 27.10.2017. It is after this stage that several adjournments as detailed below have taken in the suit for arguments.

"viz., 13.11.2017, 22.11.2017, 28.11.2017 and 12.12.2017. On 20.02.2017 the arguments was partly heard and adjourned on 05.01.2018 from thereon adjourned to 11.01.2018 and the arguments was partly heard and again posted to 19.01.2018, 29.01.2018 for argument continuation. While so, on 29.01.2018 the instant applications has been filed."

5.It is seen that thirteen years after the filing of the written statement the revision petitioners have come forward with the impugned petition and the only reason that has been put forward for seeking the orders for reopening, recalling and marking the documents is stated in paragraph No.2 which is once again extracted below:

"I state that the above suit O.S.No.1984 of 2004 and O.S.No.364 of 2005 are connected suits and conducting joint trial also. The Honourable Court posted this two suits for argument on 29.01.2018. In this juncture I was filed only copy application for getting documents and plaint copies from the Court records. In these I find out one important point/aspect i.e., the 1st plaintiff, namely S.Dharmichand's signature is deferred and disputed one. It will clearly reveal, that his signatures compare in these documents with other admitted documents. In this circumstances reopen the suit from argument stage is very important one for prove my case. Without making these documents I am unable to prove my plea."

6.The Court below has dismissed the said applications on the ground that the conduct would clearly expose that the only intention was to protract the proceedings and the affidavit which is filed in support of the impugned petitions are totally bereft of details. Challenging the same the revision petitioners are before this Court.

7.A mere perusal of the circumstances narrated supra would demonstrate that despite having thirteen years after the filing of the written statement the defendant had not cared to take out the applications though the plea of forgery and fabrication has been taken in the written statement itself. I find no infirmity in the order passed by the Court below.

The Civil Revision Petitions are dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition are also closed.

11.03.2019

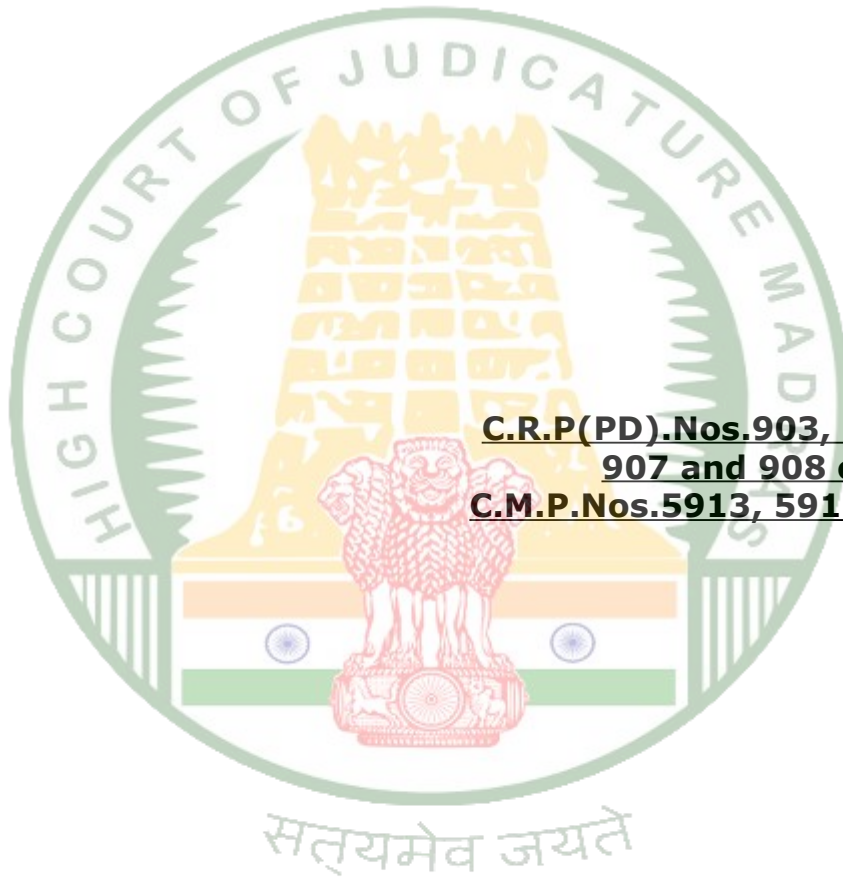
kan
Index : Yes/No
Speaking order/non-speaking order

To,
The District Munsif, Vellore.

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P.T.ASHA, J.,

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907 and 908 of 2019 &
C.M.P.Nos.5913, 5916 of 2019**

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