

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 25.02.2019

CORAM:

THE HONOURABLE MS. JUSTICE P.T.ASHA

CRP (PD) No.2684 of 2018  
and  
CMP.No.15944 of 2018

Rajeswari

...Petitioner

Vs

1. Jayalakshmi

2. Nithyanandam

...Respondents

**PRAYER:** Civil Revision Petition filled under Article 227 of Constitution of India to set aside the Fair and Decretal order dated 03.07.2018 made in I.A.No.691 of 2017 in O.S.No.350 of 2013 on the file of Subordinate Court, Dharapuram.

For Petitioner : Mr.N.Ponraj

For Respondent : Mr.A.K.Sridharan

**ORDER**

The present Civil Revision Petition is filed challenging the order passed by the learned Subordinate Judge, Dharapuram in I.A.No.691 of 2017 in O.S.No.350 of 2013, in an by which the learned Judge had allowed the application filed by the respondents herein to recall PW1 for cross examination on the side of the defendants.

2. The suit in O.S.No.350 of 2013 has been filed by the revision petitioner/plaintiff for a declaration that she is the absolute owner of the suit property and for consequential injunction restraining the respondents from interfering with her peaceful possession and enjoyment of the suit property in which she is running a bakery.

3. The defence to the above suit was that the property was a joint property in which the defendants/respondents also had an interest. The plaintiff was examined as PW1 and the plaintiff side evidence had commenced on 24.02.2017. While the evidence was under way, the respondents have come forward with the impugned application in I.A.No.691 of 2017 to recall PW1 for marking documents which they had obtained under the RTI Act from the Electricity Department, wherein there were documents to show that a No Objection Certificate had been given by the respondents in favour of the petitioner to enable her to run the bakery.

4. After hearing either parties, the learned Subordinate Judge, Dharapuram had allowed the application and challenging the same, the plaintiff is before this Court.

5. Mr.N.Ponraj, learned counsel appearing on behalf of the petitioner would contend that Order 18 Rule 17 of the CPC cannot be invoked to fill up lacuna and it can be invoked only if the Court had certain doubts which had to be clarified, which can either be done on its own motion or on an application of the parties. In support of this, the learned counsel had produced a Judgement of the Hon'ble Supreme Court reported in **2016 (5) CTC 555 (Ram Rati vs Mange Ram (D) Through L.Rs. and others)**. He would draw the Court's attention specifically to Paragraphs 12 and 13 of the said Judgement and state that the provisions of Order 18 Rule 17 could be invoked only to clarify doubts and not to fill up lacuna.

6. Heard Mr.A.K.Sridharan, learned counsel appearing on behalf of the respondents, refuted the allegation and contended that the application was taken out at the first instance only to supplement the arguments which had already been put forward by the plaintiff.

7. Heard both the counsels and perused the papers.

8. It is seen that the defendants have come forward with a case that they are also joint owners of the property and that the property is under the exclusive possession of the plaintiff/revision petitioner. The plaintiff

was in the box adducing evidence when the respondents had moved a RTI application to get necessary evidence to show that both parties are joint owners. As soon as necessary information had been obtained by them and without further delay, the respondents had filed the impugned application and the same has been rightly allowed by the Court below.

9. The petition definitely would not come within the vice of filling up lacuna, since the evidence of PW1 is still continuing and therefore the petition comes within the purview of Order 18 Rule 17 of CPC.

10. I find no infirmity in the order passed by the Court below and the present Civil Revision Petition has been dismissed. Since the suit is of the year 2013, the Court below is directed to dispose of the suit in O.S.No.350 of 2013, within a period of 6 months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

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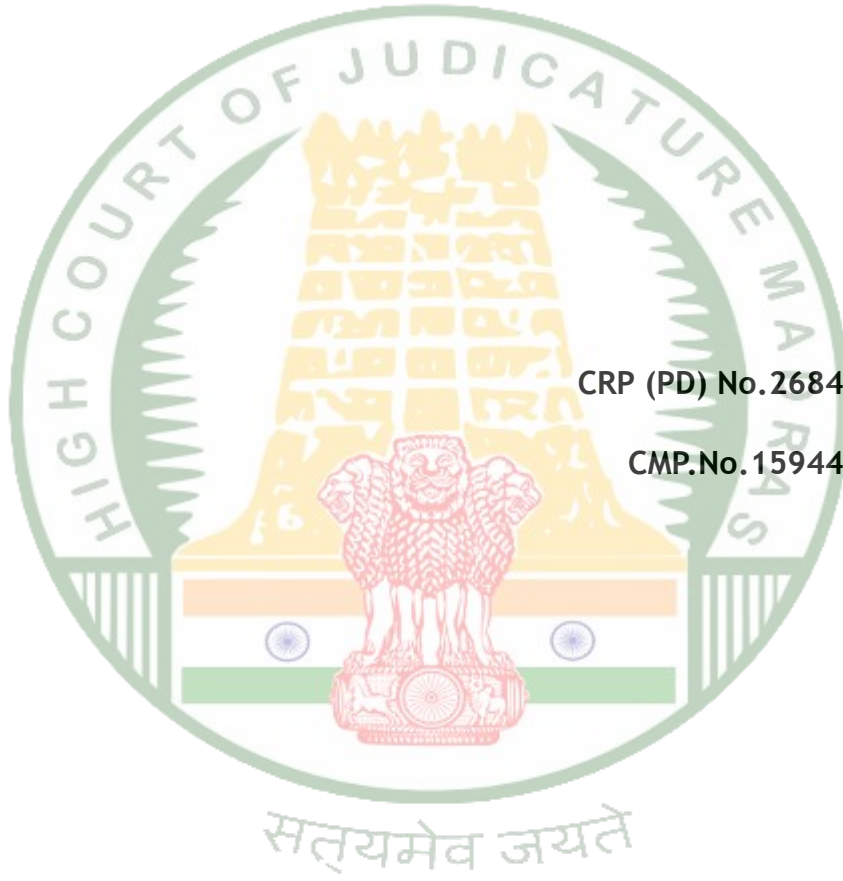
hvk

Internet: Yes/No

Speaking Order/Non-Speaking Order

P.T.ASHA.,J

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