

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

C.R.P.(PD) Nos.2003 & 2004 of 2019 and
C.M.P.No.13006 of 2019

Boopalan Chettiar ... Petitioner in both CRPs

Vs.

1.Kaliaperumal
2.Ganesan alias Vinayagamurthy
3.Jayakumar
4.Radhakrishnan
5.Revathy alias Soubboulatchoumy
6.Sathya
7.Balamuraly

... Respondents in both CRPs

Prayer: Petitions filed under Article 227 of the Constitution of India praying to set aside the order and decretal order dated 11.03.2019 in I.A.Nos.1698 & 1699 of 2018 in O.S.No.918 of 2010 on the file of the Principal District Munsif, Puducherry.

For Petitioner : Mr.R.Rajarajan
For 4th Respondent : Mr.T.S.Baskaran

COMMON ORDER

These two revision petitions have been filed against the fair and decretal order passed in I.A.Nos.1698 & 1699 of 2018 in O.S.No.918 of 2010 by the learned Principal District Munsif, Puducherry, by order dated 11.03.2019.

2.Before the Court below, the revision petitioner is the defendant against whom the respondents/plaintiffs filed the suit for declaration and recovery of possession.

3.In the suit, the plaintiffs side evidence, especially P.W.1 was examined, 27 documents were marked on their behalf. Though a chance was given to the defendant's side, to cross examine P.W.1, those chances were not utilised. Thereafter, the plaintiffs side evidence was closed and it was posted for defendant's side evidence, where the defendant himself submitted for examination and he was also cross examined by the plaintiffs side and it is posted for the argument stage and in fact, part argument was also advanced. At this juncture, the present applications have been filed by the revision petitioner/defendant to reopen and recall the P.W.1 to cross examine, in view of large number of documents since have been filed and marked on behalf of the plaintiffs.

4.The said applications since have been rejected through the impugned order, aggrieved over the same, the present revision petitions have been filed.

5.Heard Mr.R.Rajarajan, learned counsel appearing for the revision petitioner and Mr.T.S.Baskaran, learned counsel appearing for the 4th respondent.

6.The learned counsel appearing for the revision petitioner would submit that, the petitioner is the bonafide purchaser of one of the property from the plaintiffs through Power of Attorney Holder, but, in order to prove the case, certain documents though originally was filed on behalf of the plaintiffs, for which, cross examination was made by the defendant's side, subsequently some more documents were marked through P.W.1 and in order to elucidate the same in this regard from the P.W.1 through whom those documents were filed more than 10 or 12, it become necessitated to the revision petitioner/defendant to cross examine, but the said opportunity though had been given, it was missed because of the ill health on the part of the revision petitioner/defendant.

7.However, the learned counsel appearing for the respondents/ plaintiffs would submit that, assuming that, the ill health reason is to

be accepted, subsequently the defendant himself subjected for cross examination and only thereafter, it was posted for argument, at that stage, since the present applications have been filed, the said reason also cannot be an accepted one.

8.Since the substantive right of the parties are involved in respect of the property, which is the subject matter in the suit, the chance of cross examine the P.W.1, through whom since number of documents have been marked on behalf of the plaintiffs, has to be given and without giving such opportunity, if the trial Court can proceed to complete the trial and conclude the suit, then, it will be a denial of chance of the revision petitioner/defendant to cross examine.

9.However, at the same time, though some chances were given to the defendant, which was not properly utilised and belatedly these applications have been filed, because of which, to some extent the respondents/plaintiffs also suffer. If at all such permission to cross examine the P.W.1 is to be given again to the defendant's side, the same shall be only on terms.

10. In that view of the matter, this Court is inclined to dispose of these civil revision petitions with the following orders:

(i) That the impugned orders are set aside and a direction is given to the trial Court to permit the revision petitioner/defendant to cross examine P.W.1 only on one day, for which, a date can be fixed after taking the contention of both sides by the trial Court and on that date, the respondents/plaintiffs shall ensure that the P.W.1 will be present for cross examination.

(ii) At any circumstances, the defendant shall complete the cross examination on one day itself and should not ask for any further day for cross examination and such cross examination shall be restricted only in respect of the documents i.e., Exs.A.12 to A.28 marked on behalf of the plaintiffs.

(iii) After completion of such cross examination, the trial Court shall proceed to hear the arguments of both sides and decide the suit itself. This order is on payment of

cost of Rs.5,000/- (Rupees Five thousand) by the revision petitioner/defendant to the respondents/plaintiffs at the trial Court, within a period of two weeks from the date of receipt of a copy of this order.

11.With these observations and directions, these Civil Revision Petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

12.11.2019

Index : Yes/No

Speaking Order : Yes/No

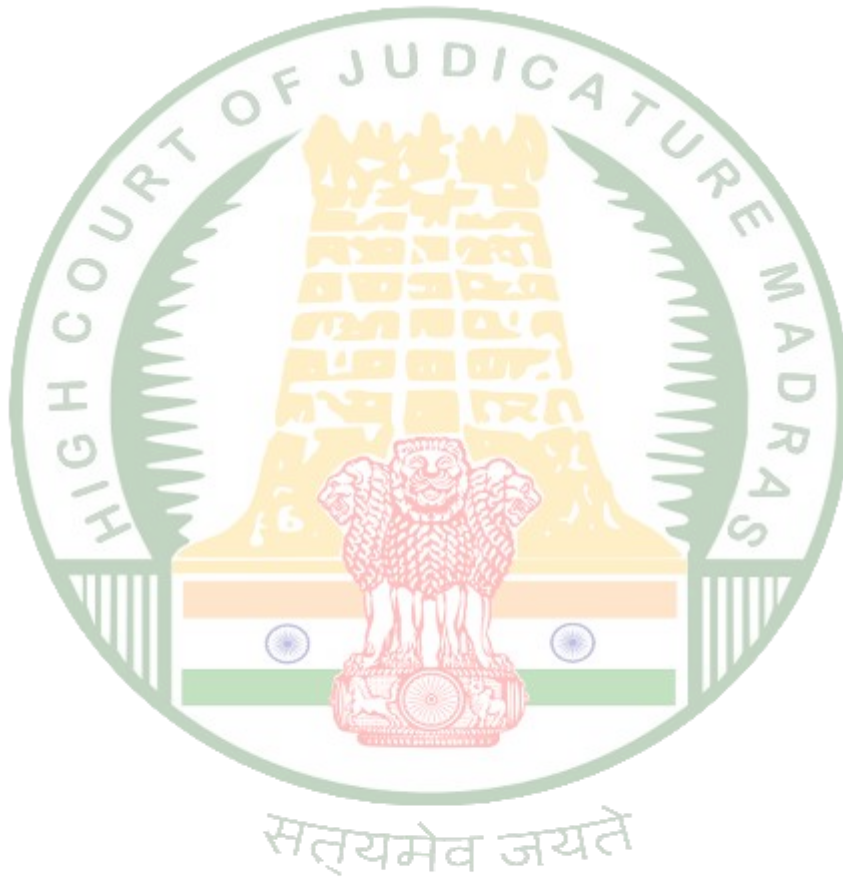
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To

The Principal District Munsif,
Puducherry.



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R.SURESH KUMAR, J.

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