

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(PD).No.2458 and 2459 of 2014

and

M.P.No.1 of 2014

1.Thiumalai
2.Renugadevi
3.Madhavi

..Petitioners in both CRPs.

vs.

G.Anjali

.. Respondent in both CRPs.

PRAYER in both CRPs.: Civil Revision petitions filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 06.03.2014 made in I.A.Nos.200 and 201 of 2014 in O.S.No.232 of 2007 on the file of the District Munsif Court, Ponneri.

For Petitioners : Mr.A.E.Ravichandran
(in both CRPs.)

For Respondent : Mr.R.Krishnaswamy
(In both CRPs.)

COMMON ORDER

The present Civil Revision Petitions have been filed to set aside the fair and decretal order dated 06.03.2014 in I.A.Nos.200 and 201 of 2014 in

O.S.No.232 of 2007.

2. The respondent/plaintiff had filed O.S.No.232 of 2007 for recovery of possession of the suit property. The petitioners had filed I.A.No.200 of 2014 to reopen the defendant's evidence for marking documents and I.A.No.201 of 2014 to recall the D.W.1 for marking a copy of the complaint dated 07.02.2007 given against the respondent herein. These applications were dismissed on 06.03.2014, with the following observations:

“The petitioners admittedly already filed the xerox copy of the complaint given to D.G.P. as against the D.W.5. D.W.5 was the husband of the respondent and he was not the part to the suit. The complaint given to the D.G.P. was not omitted to be marked as stated by the petitioners. The Court was not inclined to mark as stated by the petitioners. This Court was not inclined to mark the same as it was not filed along with any acknowledgment card. D.W.5 admits that the 1st petitioner Thirumalai had given the complaint to D.G.P. But he had not admitted any result out of that complaint. Further, the petitioner had not tried to mark the document through the D.W.5. Even the document was not shown to D.W.5. Since because the D.W.5 admits that the 1st petitioner gave complaint to D.G.P., it does not mean that the D.W.5 admits the document sought to be marked by the petitioner. Further, the petitioner had not pleaded anything about the complaint given to D.G.P. in the written statement. So without any pleading the petitioner now wants to introduce the document.

9. As the petitioner had not attempted to mark the document through D.W.5, as the petitioner not shown the documents to D.W.5, as there is no acknowledgment for the documents sought to be marked, as this Court already declined to mark the document, as there is no pleading with regard to the document sought to be marked, this Court comes to the conclusion that there is no merits in these petitions and no need to recall P.W.1 and to reopen the defendant's side

evidence. Hence this Court finds it proper to dismiss these petitions.”

3. The petitioners are the defendants in the above suit who had filed written statement and also filed the proof affidavit. In the proof affidavit, they had mentioned about the copy of the police complaint dated 07.02.2007 against DW5, the husband of the respondent/plaintiff.

4. Thus, the attempt of the petitioner to introduce a photocopy of the complaint in the evidence by reopening the evidence was disallowed on the ground that it was not allowed to be marked earlier as it was not filed with the acknowledgment card.

5. Further it has been observed that even though DW 5 had admitted that the petitioner had given a complaint against him before the D.G.P, it cannot be said that the DW5 has admitted to the consequence flowing from it. The court has declined the relief on the ground that the petitioners have also not mentioned about the complaint against DW 5 in were written statement.

6. It is noticed that the petitioner's late father Rajavelu and the respondents husband N.Ganesan, were colleagues and there were certain loan transactions between them. The petitioner's father was a constable while the

respondents husband was a head constable and that later was lending money at usurious rates and since the respondent's husband could not do business directly in his own name he got the property allegedly transferred in the name of the respondent-plaintiff who was merely a housewife having no separate income.

7. Though, the petitioner has not specifically about the complaint filed against the D.W.5 respondent plaintiff's husband in the written statement nevertheless there is an admission that there was a complaint against him by the petitioner. Whether the complaint was material document for denying the prayer in the suit is to be decided ultimately at the time of final arguments.

8. Therefore, no prejudice or harm would be caused if the petitioner is allowed to mark a copy of the same as the 1st petitioner is the author of the said complaint against DW 5. Only as the author of the said letter, 1st petitioner can file the same. Therefore, there is no harm if the said document is allowed to be introduced in evidence subject to admissibility, proof and relevancy which can be decided at the time of final argument. The respondent-plaintiff can raise all differences that are available in law at the time of argument.

9. Admittedly the petitioners are in possession of the suit property even though the sale deed has been executed in favour of the respondent plaintiff as early as 13.8.2001. Whether the petitioners have good case to defend or not cannot be decided here.

10. However, whether the document sought to be filed a true copy of the aforesaid complaint or not can be verified only if the petitioners substitute the same with the certified copy from the DGP's office. Therefore, the petitioners should obtain certified copy of the aforesaid complaint dated 07.02.2007 and file it before the Court.

11. Within such time, it shall be the duty of the petitioner is to obtain certified copy of the aforesaid complaint and substitute the same failing which the photocopy of the complaint dated 7.2.2007 which is now allowed to be marked pursuant to this order shall be expunged and deleted from the records.

12. It is noticed that the suit is of year 2007 and the application for filing the aforesaid document and for reopening the evidence was filed only in the year 2014. Therefore, the attempt to file the same has been belated. Almost

5 years have lapsed since the filing of the Present Civil Revision Petition and the suit has been kept pending awaiting the orders of this court.

13. Considering the fact that these applications have been filed belatedly, petitioners shall deposit a sum of Rs.10,000/- to the credit of the above suit as cost within a period of four weeks from date of receipt of this order and prove their bona fide.

14. On such deposit, the respondent-plaintiff shall be entitled to withdraw the amount. The District Munsif Court, Ponneri shall allow marking of the photocopy complaint dated 7.2.2007 subject to proof, admissibility and relevancy and its substitute with certified copy from the Office of the DGP, Chennai before commencement of the argument.

15. The District Munsif Court, Ponneri shall endeavour to complete the trial and proceed to pass a judgment and decree after hearing both the sides within a period of 9 months from date of receipt of this order.

16. The above Civil Revision Petition stands allowed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

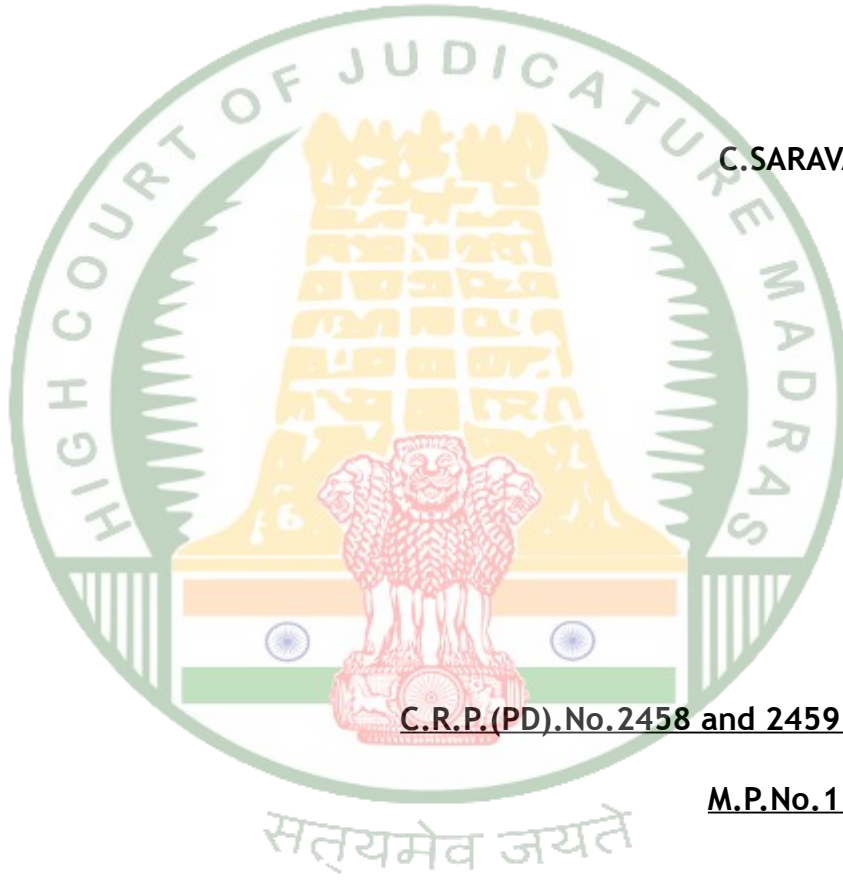
16.04.2019

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To

The Principal District Munsif Court,
Poonamallee.

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C.SARAVANAN,J.

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