

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).Nos.3090 & 4142 of 2018
and
C.M.P.Nos.17842 & 22800 of 2018

1.A.Sivasamy

2.A.Velusamy

...

Petitioners/Petitioners
/Defendant No.2 and 4

-VS-

1.M.Alamelu

2.T.Annathal @ Annuthai

...

Respondents/Respondents
/Plaintiffs

PRAYER:

Civil Revision Petitions filed under Article 227 of Constitution of India, against the Fair and Decreetal Order dated 21.06.2018 and 03.10.2018 made in I.A.No.245 of 2018 and in I.A.No.387of 2018 respectively in O.S.No.660 of 2012 on the file of the 1st Additional District Judge, Coimbatore.

For Petitioners : M/s.K. Myilsamy Nandhakumar

For Respondents : No Appearance

ORDER

The revision petitioners before this Court are the 2nd and 4th defendants in the suit in O.S.No.660 of 2012 on the file of the 1st Additional District Judge, Coimbatore.

2. Without delving deep into the merits of the case, it would suffice to narrate the facts which are necessary for disposing of this revision.

2.1. The defendants herein had filed the suit in O.S.No.660 of 2012 on the file of the learned Principal District cum Sessions Judge, Coimbatore, for partition and separate possession of their 2/7th share in the suit properties along with the prayer to restrain the defendants from alienating the suit properties. When the suit was posted for the cross examination of DW1 and when the cross examination was underway, DW1 fell down and became unconscious. Thereafter, on 27.02.2018 the revision petitioner herein came forward with application in I.A.No.245 of 2018, which is the subject matter of CRP No.3090 of 2018 on 21.04.2018 for eschewing the evidence already disposed by DW1.

2.2. Thereafter, on 08.09.2018, they have come forward with another application in I.A.No.387 of 2018 which is the subject matter of CRP.No.4142 of 2018, seeking a direction to the defendants to proceed

with the further witness. It appears that both the petitions were taken up and the application in I.A.No.245 of 2018 was dismissed by order dated 21.06.2018 and the application in I.A.No.387 of 2018 was dismissed by order dated 03.10.2018. Both the orders are the subject matter of challenge in the two revisions, before this Court.

2.3. Considering the fact that the petition in CRP.NO.3090 of 2018 is based on the order passed in CRP 4142 of 2018, this Court is proceeding to pass a common order. From the medical certificate that has been produced in respect of the petitioner in I.A.No.245 of 2018, it is seen that the DW1 is suffering from hypertension with coronary artery disease. By no stretch of imagination can be stated that DW1 has been rendered totally immobile. The witness could have been examined by appointing an Advocate Commissioner to take the evidence. There is no necessity to eschew the evidence. Though the Trial Court has dismissed the application on a different point, this Court feels that the petitioner has not let in any evidence to show that the 2nd defendant /DW1 is so incapable that he cannot adduce evidence. In case he is immobile as already stated, an Advocate Commissioner can be appointed to take evidence. It is further seen that both the applications have been filed

by the 1st defendant himself along with the 4th defendant. Therefore, it is very clear that he does not suffer any incapacity which has rendered him unfit to give evidence. Therefore, the order of the learned 1st Additional District Judge in I.A.No.245 of 2018 stands confirmed.

3. Considering the fact that the second application is filed for examining other witness, this Court deems it fit to confirm the order in I.A.No.387 of 2018 making the following observation that as and when the evidence of DW1 is complete, the defendants are well within their rights to examine the other witnesses. In the result, CRP No.3090 of 2018 stands dismissed and CRP No.4142 of 2018 also stands dismissed on the above lines. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

12.02.2019

jrs

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

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To

The First Additional District Judge,
Coimbatore.

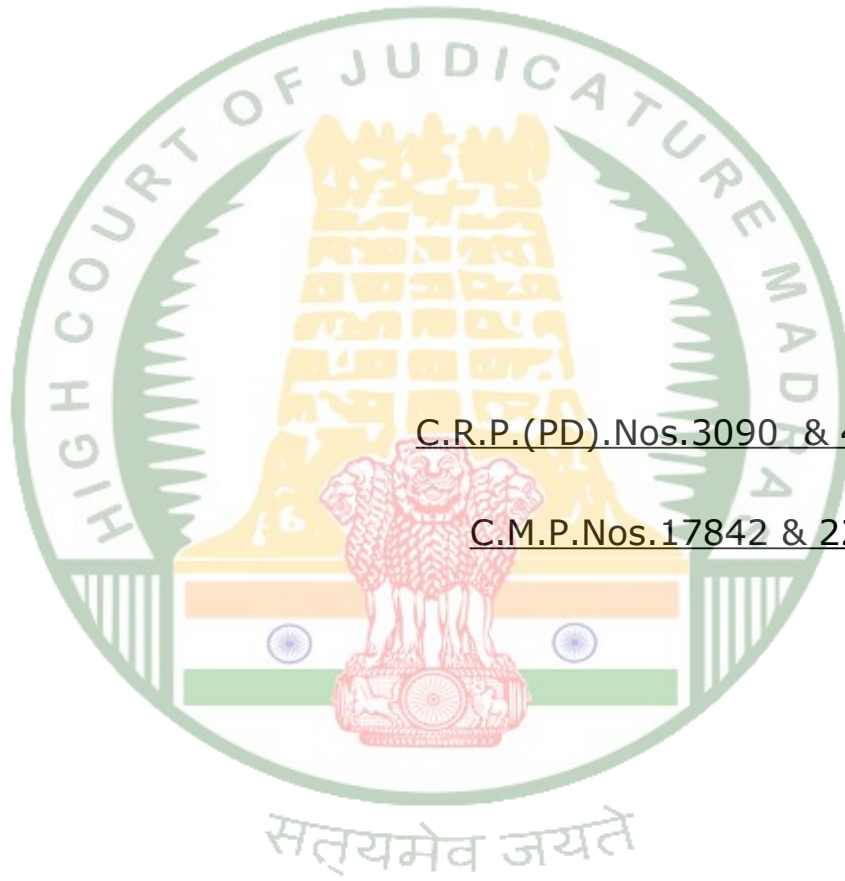
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VR Section, High Court,
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