

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.10.2020

PRONOUNCED ON : 05.11.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD).Nos.1848 & 1849 of 2015

and

M.P.No.1 of 2015 in CRP (PD) No.1848 of 2015

Selvan

... Petitioner/2nd Defendant
petitioner in both the CRPs

Vs.

1.Periyakalanaickar
2.Chinnakalanaickar

... Respondents/Plaintiffs
Respondents in both the CRPs

Common Prayer: Civil Revision Petitions are filed under Article 227 of Constitution of India, to set aside the Fair and Final order passed in I.A.Nos.43 & 44 of 2015 in O.S.No.208 of 2009 on the file of District Munsif cum Judicial Magistrate Court, Mettupalayam dated 17.03.2015.

For Petitioner : Mr.V.S.Kesavan
in both the CRPs

For Respondents : Mr.G.Karthikeyan
in both the CRPs

COMMON ORDER

These Civil Revision Petitions are filed by the petitioner to set aside the fair and final orders passed in I.A.Nos.43 & 44 of 2015 in O.S.No.208 of 2009 on the file of the District Munsif-cum-Judicial Magistrate Court, Mettupalayam, dated 17.03.2015.

2. The respondents 1 and 2 herein had filed a suit in O.S.No.208 of 2009 on the file of the District Munsif-cum-Judicial Magistrate, Mettupalayam, for the relief of declaration of their title over the suit properties and for permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit property.

3. During trial, both sides adduced evidence and when the suit was posted for further evidence on the side of the defendants, the second defendant had filed an application in I.A.No.43 of 2015 to re-open the evidence of the plaintiffs and also filed another application in I.A.No.44 of 2015 to recall P.Ws 1 and 2 for further cross-examination. The learned District Munsif-cum-Judicial Magistrate had dismissed the said

petitions by separate orders dated 17.03.2015. Feeling aggrieved, the petitioner / 2nd defendant has filed these present Civil Revision Petitions.

4. Heard Mr.V.S.Kesavan, learned counsel for the petitioner and Mr. G.Karthikeyan, learned counsel for the respondents.

5. The learned counsel for the petitioner has submitted that the suit property belongs to the defendants by virtue of settlement deed executed by their grandfather dated 22.09.2004, but the respondents/plaintiffs have filed the above suit for the relief of declaration and permanent injunction claiming that the suit property belongs to them as per the sale deed dated 17.10.1945 and also patta granted in their favour. He further submitted that during trial, on the side of the plaintiffs, the second plaintiff was examined as PW1, Revenue Inspector was examined as PW2 and thereafter, the evidence on the side of the plaintiffs was closed and the petitioner herein examined himself as DW1 and the case was posted for further evidence on the side of the defendants. He further submitted that during cross-examination of P.Ws.1 and 2, the petitioner's counsel omitted to ask questions with regard to how the vendor of the

plaintiff got title over the suit property and also with regard to patta and chitta and hence, the petitioner/2nd defendant had filed an application to re-open the evidence of plaintiffs and another application to recall P.Ws.1 and 2 for further cross-examination, but the trial court without considering the said fact had dismissed the said petitions and therefore, he prayed to allow these CRPs and set aside the orders passed by the trial court and allow the applications filed by the petitioner in I.A.Nos.43 & 44 of 2015 in O.S.No.208 of 2009.

6. The learned counsel for the petitioner has further submitted that the trial court had dismissed the said petitions relying upon certain decisions stating that if the said petitions are allowed, the petitioner/2nd defendant may fill up the lacuna. He further submitted that those decisions were rendered in respect of the petitions filed to recall the witness for taking further chief-examination whereas these petitions have been filed to recall the PWs,1 and 2 for further cross-examination. He further submitted that by way of cross-examination, lacuna cannot be filled up and therefore, the decisions which were relied upon by the trial

court will not apply to the facts of this case. Hence, he prayed to allow these Civil Revisions Petitions.

7. Per contra, the learned counsel for the respondents/plaintiffs has submitted that the respondents/plaintiffs had filed the above suit in the year 2009 for the relief of declaration of their title over the suit property and for permanent injunction. The said suit was taken up for trial in the year 2011 and during trial, the second plaintiff examined himself as PW1 on 01.02.2011 and he was thoroughly cross examined by the defendants. He further submitted that PW2 was examined on 22.09.2011 and he was also thoroughly cross examined by the defendants. He further submitted that thereafter, the petitioner herein examined himself as DW1 and subsequently, he filed an application in I.A.No.458 of 2013 to recall him (DW1) for further evidence and the said petition was allowed on a condition that the petitioner shall pay the costs but he did not pay the costs and hence, the said petition was dismissed on 13.08.2013 and thereafter, when the matter was posted for further evidence on the side of the defendants, the petitioner/2nd defendant had filed two applications in I.A.Nos.43 and 44 of 2015 i.e., after nearly four years to re-open the

evidence of the plaintiff and to recall the P.Ws.1 and 2. He further submitted that taking into consideration the conduct of the petitioner and also the fact that if the aforesaid petitions are allowed, the petitioner may fill up the lacuna, the learned trial court has rightly dismissed the said petitions and in the said order, this court need not interfere and therefore, he prayed to dismiss these Civil Revision Petitions.

8. This court has carefully considered the rival submissions and perused the materials filed along with these petitions.

9. A perusal of the orders passed by the trial court shows that the PW1 was examined on 01.02.2011 and PW2 was examined on 22.09.2011 and thereafter, the evidence on the side of the plaintiffs was closed and the matter was posted for defendants' side evidence. On the side of the defendants, the petitioner herein / 2nd defendant examined himself as DW1 and subsequently, he filed an application in I.A.o.458 of 2013 to recall him (DW1) for further examination. The trial court has allowed the said petition on a condition that the petitioner shall pay costs but the petitioner has not paid the costs and consequently, the said

petition was dismissed on 13.08.2013. Thereafter, the matter was posted for further evidence on the side of the defendants. At this stage, the petitioner/2nd defendant had filed two applications in I.A.Nos.43 and 44 of 2015 to re-open the evidence of plaintiffs' side evidence and to recall P.Ws 1 and 2 for further cross-examination after nearly 4 years from the date of examination of P.Ws.1 and 2.

10. Taking into consideration of the aforesaid facts, the trial court had dismissed the said petitions holding that if the said petitions are allowed and the petitioner is permitted to further cross examine the P.Ws.1 and 2, he may fill up the lacuna.

11. This court is of the view that by cross-examination of the said witnesses, the petitioner cannot fill up the lacuna.

12. The learned counsel for the respondents has submitted that during cross-examination, the petitioner may mark the documents and by the same, he may fill up the lacuna. During cross-examination, if any document is shown to the witness and the witness admitted the same,

then only the said document can be marked. Therefore, court is of the view that there is no basis for apprehension of the respondents.

13. Taking into consideration of the fact that both the parties are claiming title over the suit property, this court is of the view that an opportunity to be given to the petitioner/2nd defendant to recall the P.Ws 1 and 2 and cross examine further. However, he should put on terms for the inconvenience caused to the respondents/plaintiffs by taking out the applications belatedly.

14. In the result, these Civil Revision Petitions will be allowed on payment of costs of Rs.5,000/- (Rupees Five Thousand Only) to the respondents/respondents' counsel within a period of two weeks from the date of receipt of a copy of this order, failing which, these CRPs shall stand dismissed automatically without further reference to this court. If the petitioner complies with the aforesaid conditions within the aforesaid period, the trial court is directed to recall P.Ws 1 and 2 and give an opportunity to the petitioner to further cross examine the said witnesses. It is made clear that on appearance of the said witnesses, the petitioner

shall cross-examine them without seeking adjournment. Consequently,
the connected miscellaneous petition is closed.

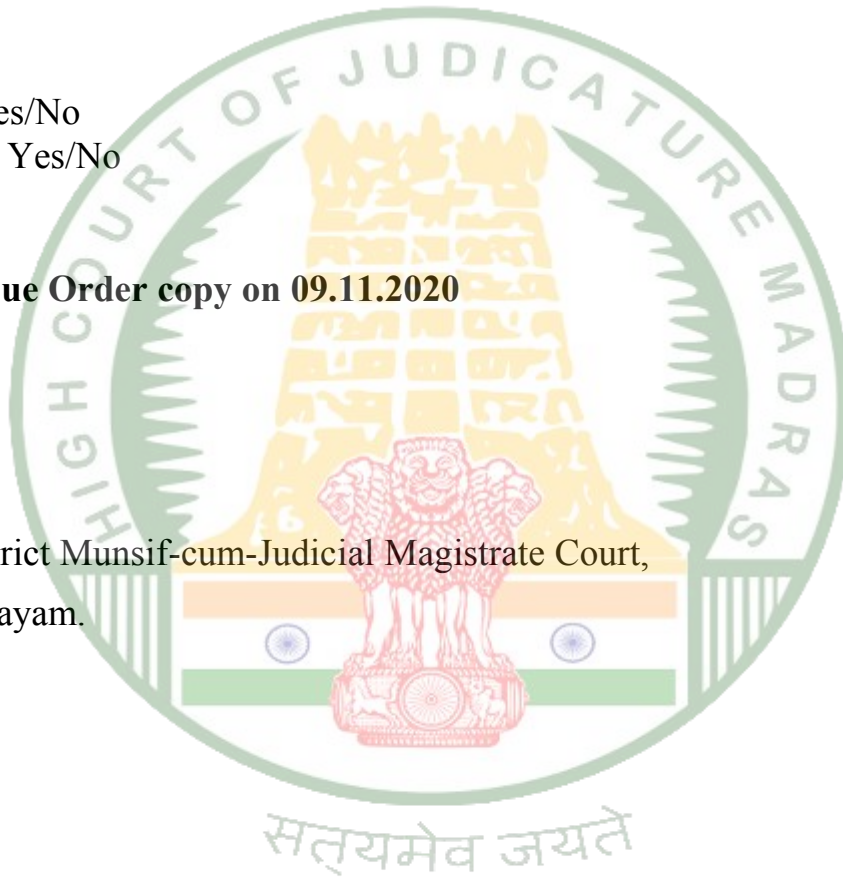
05.11.2020

Index :Yes/No
Internet : Yes/No
gv

Note: Issue Order copy on 09.11.2020

To

The District Munsif-cum-Judicial Magistrate Court,
Mettupalayam.

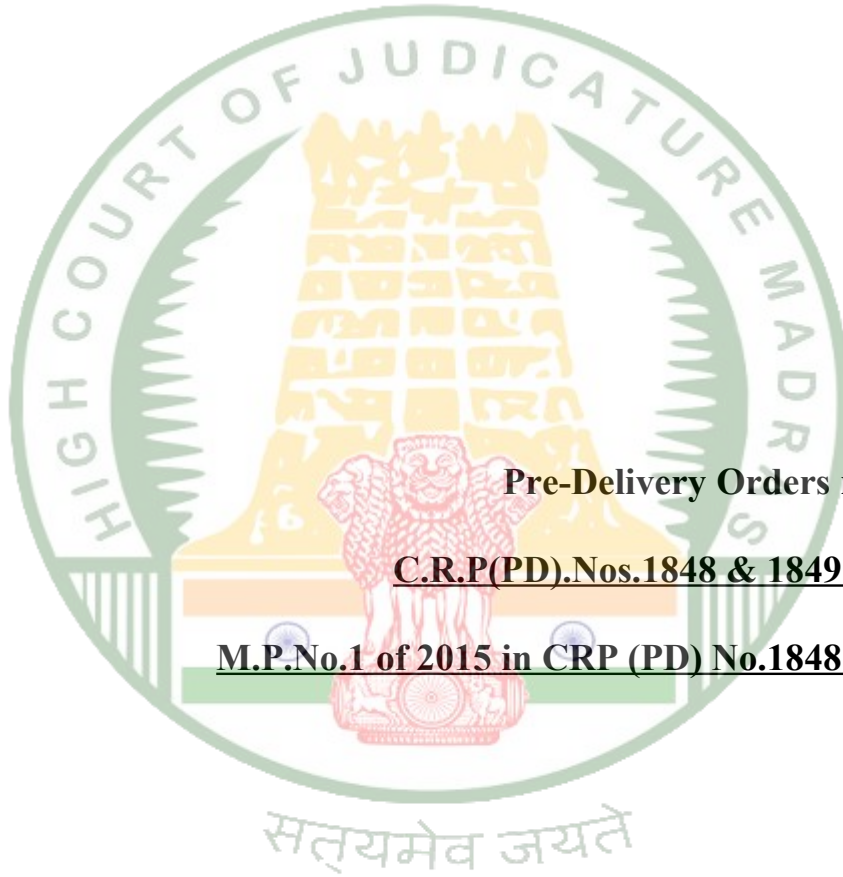


WEB COPY

CRP (PD).Nos.1848 & 1849 of 2015
and MP.No.1 of 2015

P.RAJAMANICKAM.J.,

gv



Pre-Delivery Orders made in
C.R.P(PD).Nos.1848 & 1849 of 2015
and
M.P.No.1 of 2015 in CRP (PD) No.1848 of 2015

WEB COPY

05.11.2020