

CRP (PD) No.2446 of 2015
and
CRP (PD) No.2370 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2020

CORAM

THE HONOURABLE MR.JUSTICE B. PUGALENDHI

CRP (PD) No.2446 of 2015
and
CRP (PD) No.2370 of 2015
and
MP No.1 of 2015

Rukmani (died)
1. Gowri
2. Vetrivel
3. Lalitha

...

Petitioners
in
both CRPs

Vs

Sidhalatchumy

....

Respondent in
both CRPs

Prayer in CRP (PD) No.2370 of 2015 :

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 10.04.2015 passed in I.A. No.192 of 2015 in O.S. No.100 of 2011 on the file of the learned III Additional District Judge at Puducherry and allow the above Civil Revision Petition.

Prayer in CRP (PD) No.2446 of 2015 :

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 10.04.2015 passed in I.A. No.193 of 2015 in O.S. No.100 of 2011 on the file of the learned III Additional District Judge at Puducherry and allow the above Civil Revision Petition.

For petitioner in both CRPs : Mr.V.V.Sairam

For respondent in both CRPs : Served - No appearance

COMMON ORDER

These revision petitions are filed by the defendants in O.S. No.100 of 2011 as against the order passed by the Trial court in I.A. Nos.192 of 2015 and 193 of 2015, dated 10.04.2015.

2. I.A. No.192 of 2015 was filed under Order 18, Rule 17 r/w section 151 of C.P.C. to recall DW1 and for marking the postal cover of the legal notice issued on behalf of the plaintiff.

3. I.A. No.193 of 2015 was filed under Order 7, Rule 14 (1) r/w section 151 of C.P.C. to condone the delay in filing the documents.

4. The Trial Court dismissed the aforesaid applications on the ground that DW1 was examined in chief on 01.10.2013 and DW1 was cross examined on 20.02.2014 and thereafter DW2 to DW6 were also examined and therefore, no valid reason has been assigned for the delay and accordingly the petitions filed by petitioners have been dismissed by the Trial Court.

5. In these revision petitions, notice was ordered by this Court on 14.07.2015 and notice was also served upon the respondents on 22.09.2015, the name of the respondent was also printed in the cause list, but when the matter was called, there is no representation for the respondent.

6. Heard Mr. B.V. Sairam, learned counsel for the petitioners and also perused the available records.

7. The Trial Court has rejected the aforesaid I.A.s on the sole ground that DW1 was examined in the year 2013 and was also cross examined in the year 2014 and all other defence witnesses were examined and at that point of time, it would not be appropriate to file the aforesaid application to mark certain documents on behalf of the defendant.

9. In I.A. No.192 of 2015, the defendants attempted to mark a legal notice issued on behalf of the plaintiff but the plaintiff denied the same and therefore, with certain difficulties, the defendants have traced out the cover, in which the notice was issued by the plaintiff and after collecting the same filed this application and in support of this application has also taken out a specific ground in the affidavit. Paragraph 2 of the affidavit filed in support of I.A. No.192 of 2015 reads as follows :-

I am the petitioner herein and the Defendant No.2 in the suit and I am speaking on behalf of other petitioners / Defendants. I submit that I have been examining the witnesses. I submit that I have filed an application for sending for the file of MACTOP No.1131 of 2007 pending on the file of this Honourable court so

as to compare the signature of the counsel because the counsel for the Respondent / Plaintiff has denied the signature of Advocate Thai Selvamani which has been dismissed by this Honourable Court. I submit that after a laborious search I found the postal cover of the legal notice sent by the Advocate Thai Selvamani which is vital to my case and I am producing the same and the document has be marked in evidence and therefore DW1 has to be recalled. Hence the petition.

10. Despite the same, the Trial Court has rejected the aforesaid these I.A.s on the ground that no valid reasons has been assigned by the petitioners in support of the petition viz., I.A. No.192 of 2015, to mark those additional documents. A specific ground has been taken that the plaintiff has denied the signature of his Advocate on the notice and therefore, an attempt has been made on behalf of the defendants to mark the postal cover in which the notice has been issued. Therefore, the document is ordered to be marked without any prejudice to the rights of the plaintiff in establishing the reliability, admissibility and maintainability of the documents.

11. The Trial Court is directed to permit the defendants to mark the postal cover and it is open to the plaintiff to cross examine the defendants in this regard and the trial Court can decide the admissibility, reliability and maintainability of the documents proposed to be marked while considering the case. Accordingly, both these Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petition is closed.

16.03.2020

Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
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B.PUGALENDHI, J.

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