

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29..01..2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.2570 and 2571 of 2015
and
M.P.Nos.1 of 2015, 1 of 2015, 2 and 2 of 2015

J.Gopalakrishnan

.... Petitioner in both CRPs

-Versus-

1.T.S.Krishnamoorthy
2.Neelam Jain
3.M.Balasubramanian
4.V.Ramesh
5.The Collector of Chennai
6.The Tahsildar,
Mambalam - Guindy Taluk,
Kodambakkam, Chennai 600 078.

[No relief claimed as against RR2 to 6]

... Respondents in both CRPs

Prayer in C.R.P.No.2570 of 2015: Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 26.02.2015 made in I.A.No.16276 of 2012 in O.S.No.13520 of 2010 by the VII Additional Judge, City Civil Court, Chennai.

Prayer in C.R.P.No.2571 of 2015: Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 26.02.2015 made in I.A.No.16277 of 2012 in O.S.No.13520 of 2010 by the VII Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.M.Muthappan in both RP's
For Respondents : No Apperance in both CrP's

COMMON ORDER

The revision petition in C.R.P.No.2570 of 2015 has been directed against the order passed by the learned VII Additional Judge, City Civil Court, Chennai, allowing the application filed by the petitioner to re-open the evidence of D.W.1 while the other revision petition in C.R.P.No.2571 of 2015 has been

directed against the order allowing the application to recall D.W.1 for the purpose of marking additional documents.

2. Though notice was served on the 1st respondent and a Vakalath was also filed on behalf of him, when the matter came up for hearing on 07.01.2020, none represented on behalf of the 1st respondent and therefore, the revision petitions were adjourned to 09.01.2020. On 09.01.2020 also there was no representation for the 1st respondent and therefore, this court had directed the name of the 1st respondent to be printed in the cause list and directed the matter to be posted on 13.01.2020. Despite the name of the 1st respondent has been printed, on 13.01.2020, neither the 1st respondent was present in person nor represented by a counsel. However, in order to give an opportunity to the 1st respondent, this matter was subsequently adjourned twice. Even today there is no representation for the 1st respondent, hence, this court has decided to dispose of the revision petitions on merits in the absence of the 1st respondent.

3. The respondents are the plaintiffs in O.S.No.13520 of 2010. The petitioner is the defendant in the suit. The above said suit has been filed for a decree of declaration declaring the title of the respondents to the suit property; delivery of vacant possession after removing the super structure put up by the defendants; permanent injunction restraining the defendants from interfering in the suit property and from alienating or encumbering or putting up any construction in the suit property; mesne profits; and for mandatory injunction directing the defendants 5 and 6 to restore the sub division No.257/11, patta No.3168 dated 24.02.1983 in respect of the suit property in the name of the plaintiff by cancelling the subsequent patta wrongly issued in favour of the 1st defendant on 29.02.2000. The trial in the suit has already commenced and the plaintiff's side witnesses were examined. After examination of D.W.1, the plaintiff stated to have filed the application in I.A.No.16275 of 2012 seeking permission to file additional documents viz., sale deed dated 22.07.2013, a copy of the plaint in O.S.No.5672 of 1983, a copy of the judgment in O.S.No.4065 of 1988 and O.S.No.4066 of 1988, a copy of the plaint and judgement in O.S.No.6180 of 1991, a copy of the proceedings. The court below had allowed the above said application by order dated 05.12.2014. Thereafter, the respondent had filed the applications under revision for re-opening the evidence of D.W.1 and recalling D.W.1 for the purpose of marking additional documents through his evidence. The above applications have dismissed by the court below by way of the order impugned in the revision petitions. Challenging the same, the present revision petitions have been filed.

4. The learned counsel for the petitioners would submit that if at all the petitioner wanted to adduce those additional documents in evidence, he can very well mark the same through his evidence and for that purpose, he could not seek to re-open and recall D.W.1 for the purpose of marking the additional documents filed by the respondent through D.W.1. The applications under revision have been filed only in order to drag on the suit proceedings. But, the court below without properly considering the issue, has erroneously allowed the applications holding that no prejudice would cause to the petitioner.

5. According to the learned counsel, the application filed by the respondent seeking to receive additional documents was allowed and therefore, those additional documents, could be marked through the respondent alone and he cannot compel the defendant's side witness to appear for cross examination for the purpose of marking those additional documents relined on by the respondent.

6. I have considered the submissions of the learned counsel for the petitioners and also perused the records carefully.

7. Admittedly, earlier, the application filed in I.A.No.16275 of 2014 was allowed on 05.12.2014 on payment of cost and the additional documents were ordered to be received on file. Thereafter, the applications under revision came to be filed for re-opening and recalling of D.W.1 for the purpose of marking those additional documents and cross examining him on the documents. Even in the affidavit filed in support of the applications also, absolutely, there was no reason assigned as to why the respondent wanted to mark those additional documents through D.W.1. A perusal of the affidavit filed in support of the applications would show that a patta standing in the name of the respondent got cancelled by the 1st respondent behind the back of the respondent. But, so far as other documents are concerned, there was absolutely no statement as to why those additional documents were sought to be marked through D.W.1. If at all, the respondent wanted to mark, he can very well mark the same through his evidence and he cannot compel the defendants to come to the box for the purpose of marking those additional documents and cross examination. Without considering the issue properly, the court below has erroneously allowed the applications merely holding that allowing the applications would not cause any prejudice to the defendants. Thus, for the reasons discussed above, the order impugned in the revision petitions requires interference at the hands of this court. The revision petition succeeds accordingly.

In the result, the revision petitions are allowed and the order passed by the court below in I.A.Nos.16276 and 16277 of

2012 in O.S.No.13520 of 2010 is set aside and the applications are dismissed. No costs. Consequently, connected CMPs are closed.

Sd/-
Assistant Registrar(CS-III-MDU)

//True copy//

Sub Assistant Registrar

kmk

To

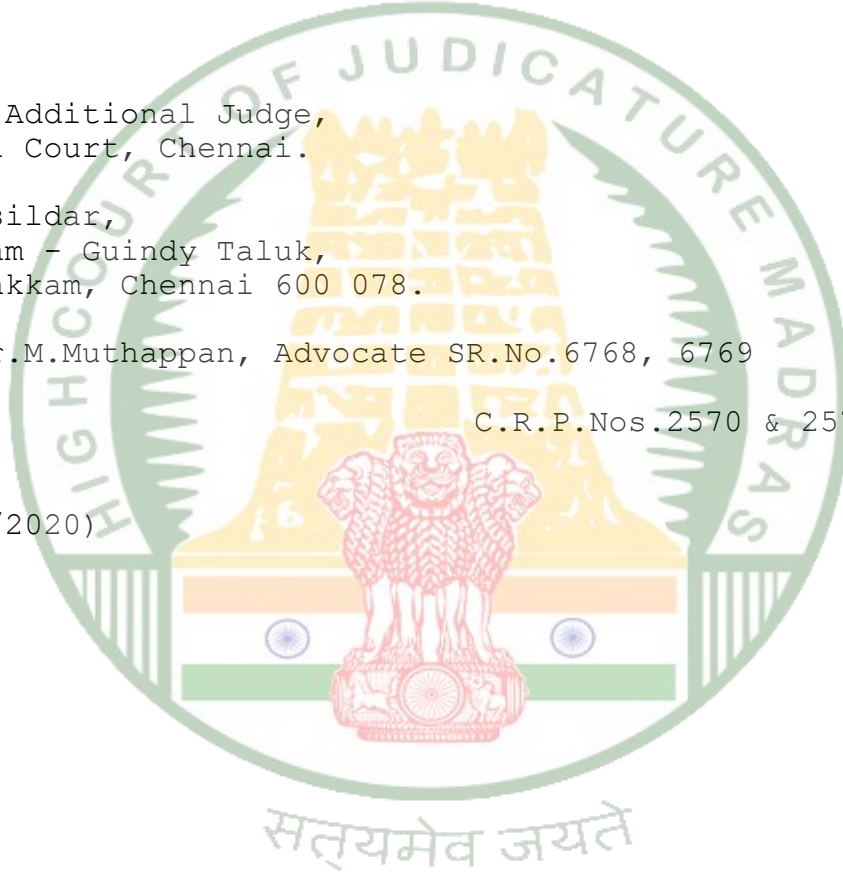
1.The VII Additional Judge,
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Kodambakkam, Chennai 600 078.

+2cc to Mr.M.Muthappan, Advocate SR.No.6768, 6769

C.R.P.Nos.2570 & 2571 of 2015

SVI (CO)
GMY (31/07/2020)



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