

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2020

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THE HONOURABLE MR.JUSTICE **M. GOVINDARAJ**

C.R.P.(PD) Nos.826, 827 and 829 of 2020
and C.M.P.Nos. 4379, 4380 & 4403 of 2020

C.R.P.(PD) No.826 of 2020

R.Sudharshan .. Petitioner

Vs.

S.Mageshwaran ... Respondent

Prayer in C.R.P.(PD) No.826 of 2020: Civil Revision Petition is filed under Article 227 of Constitution of India against the order dated 11.01.2020 in I.A.No.246 2019 in O.S.No.99 of 2017 on the file of the Subordinate Judge, Coonoor.

For Petitioner
in all C.R.Ps. : M/s.M.Arunachalam
For Respondent : M/s.M.Rajasekar
in all C.R.Ps.

COMMON ORDER

The above three Civil Revision Petitions have been preferred against the order passed by the trial Court refusing to reopen and recall P.W.1 and D.W.1.

2. Insofar as, C.R.P.(PD) Nos.826 and 827 of 2020 are concerned, it is for reopening and recalling P.W.1 evidence and C.R.P.(PD) No.829 of 2020 is concerned, it is for recalling D.W.1 for the purpose of marking certain documents.

3. The learned counsel for the petitioner would contend that the suit is for recovery of money, whereas, he has taken a definite stand in his written statement that he has not borrowed any money and not borrowed the jewelery of the plaintiff for the purpose of construction of house. He borrowed a loan from Repco Bank and he specifically pleaded about the fact in the written statement. But, at the time of his examination, the loan documents were not available with him, that is why he wants to reopen D.W.1 witness and mark the documents through D.W.1. At the same time, he also wants to put certain questions to P.W.1

by marking these documents.

4. When the defendant has taken a definite stand that he has borrowed the loan from Repco Bank, he should have produced all the documents at the time of his examination. Even assuming that it was not available at the time of his examination, he is entitled to produce the same as and when it is made available. For that purpose, this Court is of the considered opinion that D.W.1 can be allowed to mark those documents and the matter can be decided on merits.

5. Insofar as, the attempt of the defendant to mark the loan documents through the plaintiff's witness in cross examination, it is very belated and it is in fact, the petitioner has approached the trial Court for reopening P.W.1 evidence at an early incident and it was also allowed, but in spite of that, he has not availed the opportunity. Therefore, now the plaintiff side evidence cannot be reopened for cross examination of P.W.1 and C.R.P.(PD) Nos.826 and 827 of 2020 for the above relief cannot be permitted. The trial Court has rightly refused permission to reopen and recall P.W.1. I also concur with the findings of the trial Court and C.R.P.(PD) Nos.826 and 827 of 2020 are accordingly, dismissed.

6. In respect of C.R.P.(PD) No.829 of 2020 considering the fact that it is a suit for recovery of money and that the material documents pertaining to the loan transactions with the Repco Bank for construction of house is sought to be marked, this Court is of the considered view that in the interest of justice, one more opportunity can be granted to the defendant. Therefore, permission is granted to recall D.W.1 and to mark the documents.

7. The learned counsel for the petitioner would also submit that he will not take more than one day for marking those documents. Therefore, the learned counsel for the respondent is directed when the matter is posted for cross, to complete the cross examination as expeditiously as possible preferably within one or two days and after that, the trial Court is directed to conclude the trial and pass orders within a period of one month. The documents will be received subject to proof, relevancy and admissibility and it is open to the trial Court to deal with the same in accordance with law.



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In the result, C.R.P.(PD) Nos.826 and 827 of 2020 are dismissed and C.R.P.(PD) No.829 of 2020 is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

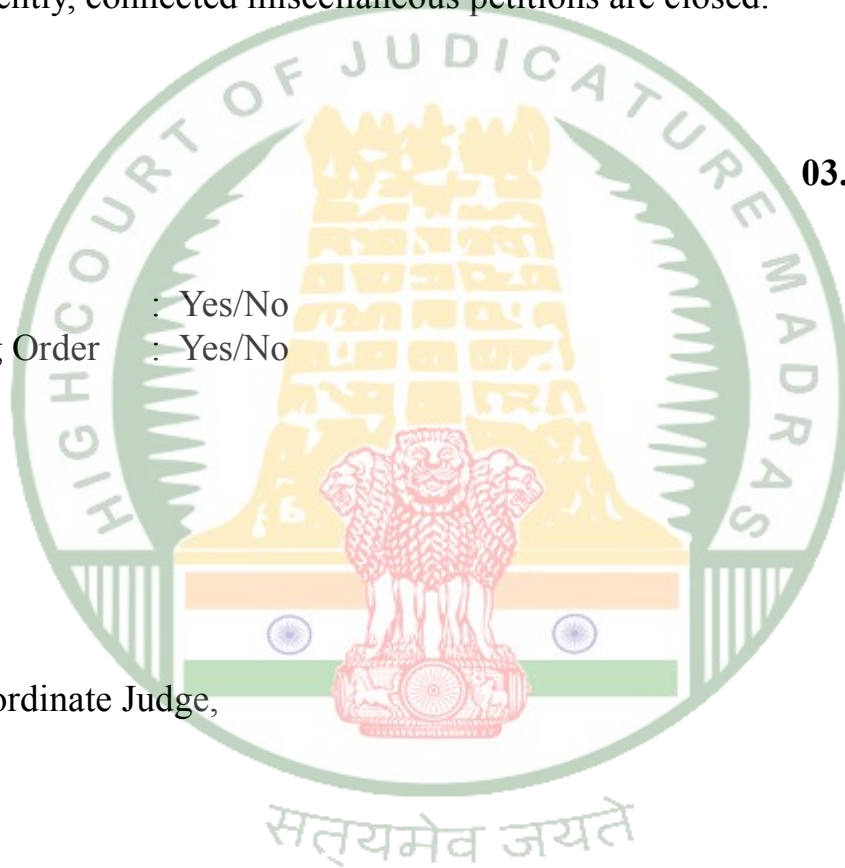
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Index : Yes/No
Speaking Order : Yes/No

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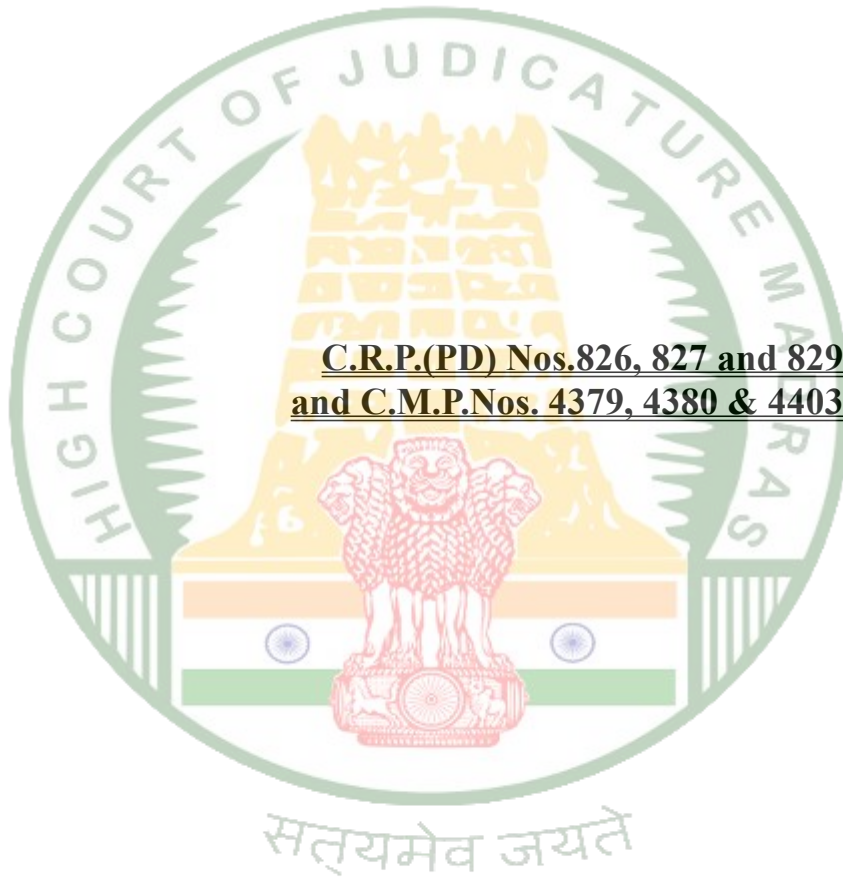
The Subordinate Judge,
Coonoor.



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M. GOVINDARAJ, J.

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