

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.2695 of 2018
and CMP No.15963 of 2018

Raja Ramalingam

... Petitioner

Vs

1. Malathi
2. Ilamathi
- 3.Arumugham
4. Muniandi
5. AVK Trust,
by its President Sakthivel
6. Maheswari
7. Rajan
8. Anjammal
9. Govindasamy
Ilanjiyam (died)
10. Ayyakannu
11. Prathibha
12. Periar @ Kaliaperumal
13. Jothi

1/7

14. Santhi

15. Sathiaseelan

16. Arunachalam

... Respondent

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, praying to allow the revision petition and set aside the fair and decretal order dated 04.07.2018 passed in I.A.No.136 of 2018 in O.S. No.52 of 2013 on the file of the II Additional District and Session Judge, Chidambaram.

For Petitioner : Mr.R.Gururaj

For Respondents : No appearance

ORDER

This revision is against an order of the trial Court dismissing the application filed by the 1st defendant in O.S.No.52 of 2013, seeking to recall DW1 (the 3rd defendant in the suit) for cross examination by the 1st defendant.

2. The suit is one for partition filed by the daughter of the 1st defendant. She has impugned certain alienations made by the 1st defendant

in favour of the 3rd defendant and others. The 1st defendant has filed a written statement contending that the 3rd defendant practised Witch-craft on him and obtained the Sale Deeds when he was under the influence of the 3rd defendant. According to him, the sales were not voluntary. Having filed a written statement on these lines, the 1st defendant's counsel was absent on the day when the 3rd defendant was examined as DW1 and was cross examined by the plaintiff's counsel. Recording the absence of the counsel for the 1st defendant, the trial Court had closed the evidence of DW1 and posted the matter for further evidence. It is at this stage, the 1st defendant filed the above application seeking to reopen the evidence of DW1, recall him for further cross examination on his side.

3. The Trial Court dismissed the application, concluding that the 1st defendant had not impugned the alienations in the written statement filed by him and therefore he has no adverse case as against the 3rd defendant in order to enable him to cross examine the 3rd defendant as per Section 138 of the Evidence Act.

4. I have heard Mr.R.Gururaj, learned counsel appearing for the petitioner. The respondents though served, are not appearing either in person or through counsel duly instructed.

5. Mr.R.Gururaj, learned counsel appearing for the petitioner/1st defendant would take me through the written statement filed in the suit to contend that the 1st defendant had raised an issue regarding the validity of the Sale Deed when the issue has also been framed in the suit. That being the case, according to the learned counsel, the trial Court was not justified in observing that the 1st defendant has not pleaded an adverse case that of the case of the 3rd defendant. He would also point out that under Section 138 of the Evidence Act, as an adversary he has got a right of cross examination.

6. I have considered the submissions of the learned counsel.

7. I see considerable force in the arguments of the learned counsel to the effect that the trial Court was not right in concluding that the 1st

defendant has not pleaded an adverse case to the claim of the 3rd defendant. The 1st defendant even in the written statement had stated about the circumstances under which the sale deed came into being. It is also seen from the records that the suit filed by the 3rd defendant based on an alleged Sale agreement was also dismissed and an appeal against that Judgment was also dismissed confirming the Judgment and decree in O.S.No.1 of 2009.

8. In view of the above facts, I am constrained to observe that the trial Court was not right in dismissing the application holding that the 1st defendant has no right of cross examination of DW1. It is seen from the records that there are certain adverse claims made by the 1st defendant against the 3rd defendant and therefore, the 1st defendant would always have a right to cross examine the 3rd defendant who had deposed as DW1.

9. In view of the above, this Civil Revision petition is allowed. The order of the trial Court is set aside. I.A No.136 of 2018 will stand allowed. The trial Court shall fix a date to recall DW1 for cross

examination by the 3rd defendant. The 3rd defendant shall cooperate with the Court in completing the Cross examination on the day on which the witness appears for cross examination, without seeking further time. The trial Court will do well to fix a date for the appearance of the 3rd defendant and ensure his presence on the said date. No costs. Consequently, connected miscellaneous petition is closed.

08.10.2020

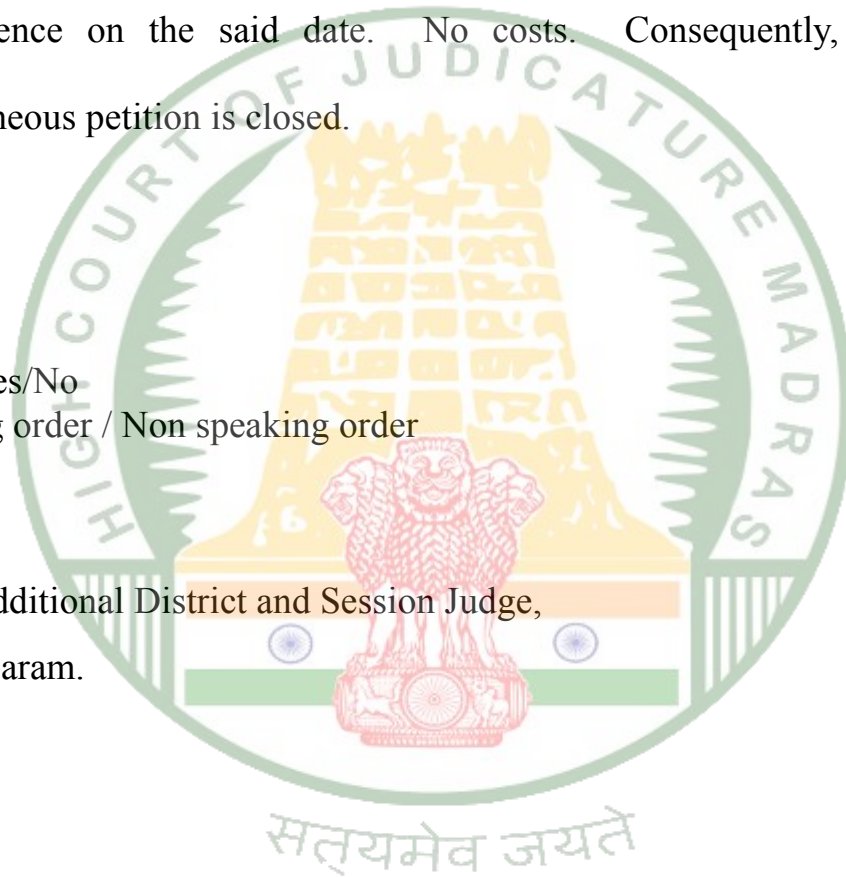
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Index: Yes/No

Speaking order / Non speaking order

To

The II Additional District and Session Judge,
Chidambaram.



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