

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 24.01.2020]

[ORDERS PRONOUNCED ON : 25.02.2020]

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.R.P.[PD] Nos.4055 and 4056 of 2014

and

M.P.Nos.1 and 1 of 2014

1. Amarjothi
2. S.Kandasamy

... Petitioners in both C.R.Ps./
Defendants in O.S. and
Plaintiffs in Counter Claim

.. Vs ..

1. S.Chakaravarthi
2. S.S.A. Shakila Banu
- (a) S.Syed Ali Shakila Banu

... Respondents in both C.R.Ps./
Plaintiffs in O.S. and
Defendants in Counter Claim

Prayer in both C.R.Ps.:- Civil Revision Petitions are filed under Article 227 of the Constitution of India, praying to set aside the order and decretal order dated 28.08.2014 made in I.A.Nos.8225 & 8226 of 2014 respectively in O.S.No.4420 of 2008 on the file of the XIII Assistant Judge, City Civil Court, Chennai.

In both C.R.Ps.

For Petitioners : Mr.Murugan
For R-1 : Mr.V.Subramani
For R-2 : No Appearance

COMMON ORDER

Both these civil revision petitions have been filed against the order dated 28.08.2014 passed by the learned XIII Assistant Judge, City Civil Court, Chennai, in I.A.Nos.8225 & 8226 of 2014 respectively in O.S.No.4420 of 2008.

2. The revision petitioners herein/defendants in the suit in O.S.No.4420 of 2008 have filed the above said interlocutory applications before the trial Court under Order XVIII Rule 17 r/w. Section 151 of CPC seeking to re-open the evidence of P.W.1 and to recall P.W.1 for further examination and the said applications were dismissed by the learned Trial Judge by order dated 28.08.2014.

3. Originally, the first respondent herein/plaintiff has filed the above said suit in O.S.No.4420 of 2008 before the learned XIII

Assistant Judge, City Civil Court, Chennai, for permanent injunction, wherein, the defendants have filed a written statement and counter claim declaring the Settlement Deed dated 17.03.1999 executed in favour of the plaintiff as null and void and also for partition and separate possession. The said suit was dismissed for default. Thereafter, counter claim was taken up; ex-parte order of dismissal was set aside and the suit was restored to file. P.W.1 was examined and cross-examined.

4. On 10.07.2013, the first respondent herein/plaintiff has filed proof affidavit and marked documents on 17.07.2013 and the suit was posted for cross-examination of P.W.1 by the defendants on 24.07.2013, but they were not ready on that day for taking cross examination of P.W.1 and hence, the case was adjourned to 02.08.2013, 13.08.2013 and finally adjourned to 19.08.2013 for cross-examination of P.W.1 as last chance. However, on that date, the defendants or their counsels were not appeared and finally, the learned trial Judge has passed the order by stating that the cross examination of P.W.1 was closed on 19.08.2013 and the case was

posted for arguments on 26.08.2013 and 29.08.2013. Thereafter, the defendants have filed re-open and re-call petition for the purpose of cross-examination of P.W.1. Notice was served on the first respondent herein/plaintiff. The defendants have not prolonged the suit and as such, the plaintiff made an endorsement in the petition stating that no counter petition may be allowed with terms. On 24.09.2013, the learned trial Judge, has allowed the re-call petition with a condition to complete the cross-examination of P.W.1 on the same day by the defendants and adjourned the matter to 03.10.2013. But P.W.1 was cross-examined on that day in part only and the case was adjourned to 10.10.2013 and 25.10.2013. The defendants' counsel requested for cross continuation and the case was adjourned for cross examination on 29.10.2013 but on that day, the defendants have not taken cross examination, in turn, they have filed a petition for producing documents from the hospital authorities and finally, the learned Judge has allowed the petition on 13.02.2014 and the case was adjourned again for P.W.1's cross-examination on 24.03.2014.

5. On 24.03.2014, the defendants have not appeared and the matter was adjourned to 01.04.2014 finally for cross-examination of P.W.1. Again, the defendants' counsel sought time and the matter was posted on 03.04.2014 for cross continuation of P.W.1 as finally. Once again, the defendants' counsel sought for time and the learned XIII Assistant Judge, City Civil Court, Chennai, has adjourned the case finally for cross continuation on 08.04.2014 with a direction to pay Rs.500/- to the plaintiff as day cost to him for the second time and also stated as no further adjournments.

6. On 08.04.2014, the first respondent herein/Plaintiff was present and the day cost was paid to him and on that date, the defendants have not cross-examined P.W.1 and the matter was adjourned to 11.04.2014 finally for cross-examination of P.W.1. Hence, the learned trial Judge has observed that "P.W.1 and Plaintiff's counsel present and defendants' counsel not present till 3.15 p.m. The defendants have filed adjournment petition and the same was dismissed by the trial Court, since the defendants wantonly prolonged the matter for several hearings without cross-examine P.W.1 and

hence, cross examination of P.W.1 was closed as defendants not ready and for further prosecution witness, if any, the matter was adjourned to 16.04.2014”.

7. On 16.04.2014, the learned counsel for the plaintiff has made an endorsement stating that there is no further evidence on the side of the plaintiff and that examination of the plaintiff's side witness was closed and the case was posted for the defendants' side evidence on 22.04.2014. On 22.04.2014 also, they did not file any re-open or re-call petition and no notice was served on the plaintiff and also none appeared for the defendants, hence the matter was posted to 04.06.2014 for defendants' evidence. Re-open and recall petition were filed by the defendants only in June 2014 and that they have stated the reason as viral fever suffered by the defendants' counsel and so, the counsel for the defendants could not appear before the learned XIII Assistant Judge, City Civil Court, Chennai, on 11.04.2014 for cross-examining the plaintiff. The Trial Court observed that despite several opportunities were given to the defendants to cross-examine P.W.1, they have not come forward to cross examine P.W.1.

8. Heard Mr.Murugan, learned counsel for the petitioners and Mr.V.Subramani, learned counsel appearing for the first respondent and perused the records.

9. The learned counsel for the revision petitioners/defendants would submit that it is the specific case of the defendants that at the time of the alleged Settlement Deed executed in favour of the plaintiff, the executor is not in the stage of sound mind and consequently, the alleged Settlement Deed executed is null and void and hence, they filed a petition to summon the medical records from the hospital authorities and in this connection, witnesses were examined and documents were marked. After cross examination of C.W.1, the matter was again posted for cross-examination of P.W.1. Therefore, the delay in cross-examination of P.W.1 was occasioned due to the cross-examination of C.W.1 and hence, he seeks to allow the Civil Revision Petitions.

10. Per contra, the learned counsel appearing for the first respondent/plaintiff would submit that originally, the case was posted for cross-examination of P.W.1 and despite several opportunities, the defendants have not cross examined P.W.1 and hence, the evidence of P.W.1 was closed and when the defendants have filed an application, the plaintiff has made an endorsement and accordingly, that application was allowed subsequently and hence, the court has allowed for further cross-examination of P.W.1 on payment of cost and further, yet another application has been filed seeking to re-open the evidence of P.W.1, but the said application has been filed with a delay of four months. When the case was posted for cross-examination in the months of February and April, the defendants have not chosen to cross-examine P.W.1 and hence, the plaintiff's side examination was closed and the petitions for re-open and recall were filed by the defendants only in June 2014 and no explanation has been offered except to say that the petitioners' counsel was not well.

11. On a perusal of the Court records, it is seen that during the cross-examination of P.W.1, he has denied the alleged Settlement Deed and in order to prove the mental status of the executor at the time of executing the Settlement Deed, medical evidence was examined as C.W.1 and after cross-examination of the medical witness viz., C.W.1, the matter was again posted for cross-examination of P.W.1. The medical witness from the hospital was completed on 19.03.2014 and thereafter, P.W.1 was not appearing for several hearings.

12. It is also to be stated that the revision petitioners/defendants have filed counter claim for partition; declaration and injunction. Pending suit, it is claimed that the first respondent herein/plaintiff has sold the property to third party, the second respondent herein and has left the suit for dismissal on 19.02.2009 and after long time, an interlocutory application was filed to restore the suit with a delay and those delay petition for restoration of the suit was also allowed and thereafter, the medical

evidence from the hospital authority was examined as C.W.1 and hence, on the above factual background, I find that the reasons assigned by the learned trial Judge for dismissing the petitions filed for reopen and recall are not just and proper and hence, having regard to the above narrated circumstances, I am inclined to allow both the civil revision petitions.

13. In the result,

[i] Both the Civil Revision Petitions are allowed.

[ii] Consequently, both I.A.Nos.8225 & 8226 of 2014 respectively in O.S.No.4420 of 2008 are allowed. The plaintiff's side evidence was re-opened and P.W.1 was re-called for cross-examination.

[iii] The learned XIII Assistant Judge, City Civil Court, Chennai, is directed to fix a date for cross-examination of P.W.1, within a period of two weeks from the date of receipt of a copy of this order and complete the trial within a period of twelve weeks thereafter.

[iv] There shall be no order as to costs.

[v] The connected miscellaneous petitions are closed.

25.02.2020

Internet :Yes
Index : Yes/No
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To

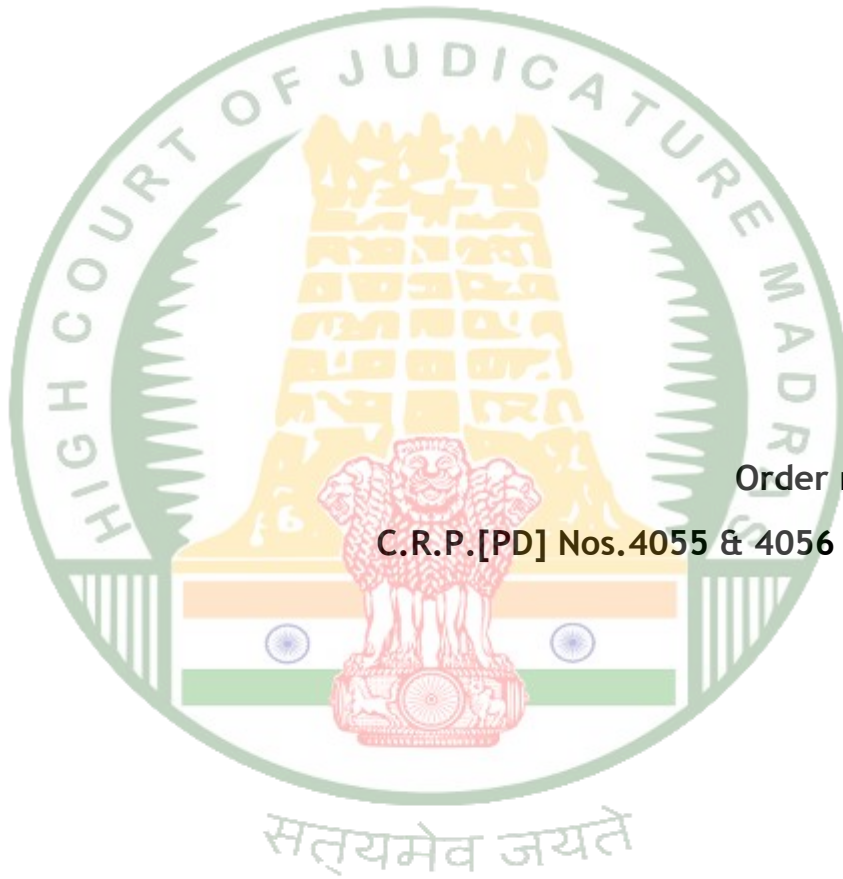
XIII Assistant Judge,
City Civil Court,
Chennai.



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RMT.TEEKAA RAMAN, J.

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Order made in
C.R.P.[PD] Nos.4055 & 4056 of 2014

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