



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05..02..2020
CORAM

WEB COPY

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.1065 of 2017
&
C.M.P.Nos.5121 of 2017
and
Civil Revision Petition No.1066 of 2017

Meenambal

... Petitioner in both CRPs
/Plaintiff/Petitioner

-Versus-

1.Thenmozhi
2.Saravanan
3.Valarmathi
4.Thangaraj

... Respondents/Defendants/
Respondents in both CRPs

Prayer in C.R.P.No.1065 of 0217: Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decretal order dated 31.01.2017 made in I.A.No.1351 of 2016 in O.S.NO.213 of 2013 by the learned Principal District Munsif, Namakkal, Namakkal District.

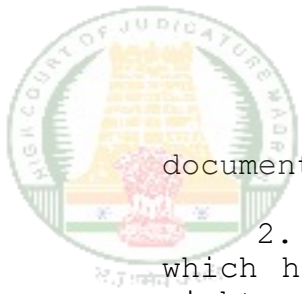
Prayer in C.R.P.No.1066 of 0217: Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decretal order dated 31.01.2017 made in I.A.No.1352 of 2016 in O.S.NO.213 of 2013 by the learned Principal District Munsif, Namakkal, Namakkal District.

For Petitioner : Mr.T.L.Thirumalaisamy for
petitioner in both CRPs

For Respondent(s) : Mr.S.Sankar for respondents
in both CRPs

COMMON ORDER

These revision petitions have been filed against the order passed by the learned Principal District Munsif, Namakkal, dismissing the applications filed by the petitioner seeking to re-open and recall P.W.1 for the purpose of marking additional



documents.

2. The petitioner is the plaintiff in O.S.No.213 of 2003 which has been filed for a declaration declaring the plaintiffs right over the suit property and for mandatory injunction for removal of the constructions put up on the disputed land and also for injunction restraining the defendants from interfering with the plaintiffs from using the pathway. The respondents are the defendants in the suit. After the trial was over and the suit has been posted for arguments, the petitioner filed the applications under revision seeking to re-open and recall P.W.1 for the purpose of marking additional documents which are Advocate Commissioner's Report filed in the earlier suit in O.S.No.19 of 2003 and the plaint in O.S.No.19 of 2003 wherein the petitioner was the 2nd plaintiff. The above applications were dismissed by the court below. Challenging the same, the present revision has been filed.

3. I have heard the learned counsel for the petitioner and the learned counsel for the respondents and also perused the records carefully.

4. The suit in O.S.No.19 of 2003 was filed by the petitioner in respect of a property adjacent to the suit schedule property in the instant suit, wherein an Advocate Commissioner was appointed and a report was also filed by the Advocate Commissioner. After trial the suit was decreed. Subsequently, the present suit has been filed in respect of an adjacent property and after trial when the suit has been posted for argument, the petitioner came out with the instant applications seeking to re-open and recall P.W.1 for the purpose of marking report filed by the Advocate Commissioner and the plaint in the earlier suit. According to the petitioner, those additional documents would be used to decide the issue in the instant suit. However, without considering the facts and circumstances, the court below has erroneously dismissed the application which needs interference at the hands of this court.

5. Per contra, the learned counsel appearing for the respondents would contend that absolutely there was no pleading regarding the earlier suit said to have been filed by the petitioner and also regarding the report of the Advocate Commissioner filed in the earlier suit. Without any such pleading, those documents could not be permitted to be proved in evidence and that too, at the stage when the case was posted for argument, after the trial was over. The court below was right in dismissing the applications and the same does not call for any interference.

6. Admittedly in the instant case, the suit was filed in the



year 2013. The trial of the suit was over and when the case has been posted for arguments, the petitioner came out with the applications for re-opening and recalling P.W.1 for the purpose of marking additional documents which were in fact available even at the time of filing of the instant suit. For the reasons best known to the petitioner, those documents were not produced at the time, when the petitioner examined himself in court. That, apart as rightly pointed out by the learned counsel appearing for the respondents, there was also no pleading in the plaint regarding the earlier suit filed by the petitioner and without any pleading, such additional documents cannot be allowed to be marked in evidence. Considering all these factual and legal aspects, the court below has dismissed the applications under revision and this court does not find any infirmity in the order passed by the court below dismissing the applications filed by the petitioner. Thus, the revision petitions fail and the same are liable only to be dismissed.

7. In the result, the Civil Revision Petitions are dismissed and the order passed by the court below is confirmed. However, considering the fact that the suit has been pending from the year 2013, the court below is directed to dispose of the suit within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected CMP is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Principal District Munsif, Namakkal, Namakkal District.

+1cc to Mr.T.L.Thirumalaisamy, Advocate, Sr.No.9203

C.R.P.Nos.1065 & 1066 of 2017

BS (CO)
GS (08/07/2020)