

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2020

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.R.P. (PD). Nos. 427 to 429 of 2017
and C.M.P. Nos. 1989 to 1991 of 2017

1.B. Selvam
2.Pushpa

... Petitioners in
C.R.P. No. 427 of 2017

B. Selvam

... Petitioner in
C.R.P. Nos. 428 & 429 of 2017

Vs

1.P.R. Ravi Sankar
2.S. Kalavathi
3.R. Sridhar
4.R. Latha
5.S. Sujatha
6.R. Anantha Padmanaban

... Respondents in
all C.R.Ps.

Common Prayer: Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 07.12.2012 made in I.A. Nos. 261, 258 & 260 of 2012 respectively in O.S. No. 398 of 2010 on the file of the Sub Court, Tambaram.

For Petitioners : Mr. P. Narayanamoorthy

For Respondent : Mr. S. Ramesh

COMMON ORDER

These matters are heard through "Video Conferencing".

The present Civil Revision Petitions are filed to set aside the fair and decretal common order dated 07.12.2012 made in I.A. Nos. 261, 258 & 260 of 2012 respectively in O.S. No. 398 of 2010 on the file of the Sub Court, Tambaram.

2. The issue involved in all the three Civil Revision Petitions are interlinked and hence, they are disposed of by this common order. The parties are referred to as per their rank in C.R.P. (PD). No. 427 of 2017.

3. The 1st petitioner is 1st defendant, 2nd petitioner is third party and impleaded as 2nd defendant in O.S. No. 398 of 2010 on the file of the Sub Court, Tambaram. The respondents filed the said suit for declaration to

declare that the respondents are owners of the suit property after the death of their mother, as a legal heirs of the deceased Saraswathi Ammal and the sale deed in favour of late Saraswathi Ammal is valid and binding on the petitioners, for a direction to the petitioners to quit and deliver vacant possession of the suit property and for damages. According to the respondents, their mother Saraswathi Ammal purchased the suit property from one Logambal by sale deed Document No.513 dated 14.02.1994. After the death of their mother, the respondents have become absolute owner and filed suit for the relief stated above.

3(a) The 1st petitioner filed written statement and denied their title and stated that vendor of the respondents' mother, Logambal filed O.S. No. 2226 of 1985 against the petitioners and suit ended in their favour. The respondents filed four petitions in I.A. Nos.258 to 261 of 2012 in the suit to reopen the case, issue subpoena to Sub Court at Poonamallee, calling for the papers/case bundles pertaining to O.S. No. 2226 of 1985 and A.S. No. 60 of 1990, to recall respondents' side witness and to implead 2nd petitioner, wife of 1st

petitioner as 2nd defendant in the suit. According to the respondents, the 1st petitioner has stated that suit filed by the Logambal ended in his favour, but the respondents came to know that suit filed by Logambal was decreed and appeal A.S. No. 60 of 1990 filed by the petitioners was dismissed, directing them to vacate and deliver vacant possession. They came to know about the proceedings only in January, 2012 and filed four I.A.s. The petitioners filed separate counter affidavits and opposed the petitions. The learned Judge considering the averments in the affidavit and counter affidavit, dismissed the I.A. No.259 of 2012 filed to issue subpoena to Sub Court at Poonamallee, calling for the papers/case bundles pertaining to O.S. No. 2226 of 1985 and A.S. No. 60 of 1990 and allowed I.A.Nos. 258, 260 & 261 of 2012 filed to reopen the case, recall respondents' side witness and to implead 2nd petitioner, wife of 1st petitioner as 2nd defendant in the suit.

4. Against the said order dated 07.12.2012, allowing I.A. Nos.261, 258 & 260 of 2012 in O.S. No. 398 of 2010, the petitioners have come out with the present Civil Revision Petitions.

5. The learned counsel appearing for the petitioners contended that the suit was filed in the year 2006, whereas petition for impleading the 2nd petitioner was filed only in the year 2012 and hence, the same is barred by limitation. The respondents claim that their mother Saraswathi Ammal purchased the suit property from Logambal. In that case, they ought to have impleaded the 2nd petitioner at the time of filing of the suit itself and the consequential order of recalling and reopening is illegal, as the same were filed only to fill up the lacuna. The petition for re-open and re-cal were filed only to rectify the mistake admitted in the cross examination of P.W.1 and P.W.2 and prayed for allowing all the Civil Revision Petitions.

6. The learned counsel appearing for the respondents contended that in all the Civil Revision Petition, in the earlier proceedings filed by Logambal, both the petitioners were defendants and they were directed to vacate and deliver vacant possession to the respondents. In the Second Appeal filed by the petitioners, they committed perjury by filing false affidavit that Logambal

died on 05.11.2003, while she lived up to May, 2005. The respondents, after due verification of the records, came to know about the false affidavit filed by the petitioners in the Second Appeal. On coming to know of the earlier proceedings where both the petitioners were defendants, the respondents have filed the petitions to reopen the case, issue subpoena to Sub Court at Poonamallee, calling for the papers/case bundles pertaining to O.S. No. 2226 of 1985 and A.S. No. 60 of 1990, to recall respondents' side witness and to implead 2nd petitioner, wife of 1st petitioner as 2nd defendant in the suit. The earlier proceedings initiated by Logambal are necessary for proper adjudication of the issues in the present suit. The respondents came to know that the petitioners have filed false affidavit in the Second Appeal stating that Logambal died on 05.12.2003, while she lived up to May 2005. The learned counsel appearing for the respondents further submitted that the respondents have filed petition to set aside the judgment in the Second Appeal and impleading them as parties in the Second Appeal and both the petitions were allowed on 01.10.2015 and subsequently, the Second Appeal was heard and dismissed by this Court on 05.12.2016. In view of the above circumstances,

the order of the learned Judge does not warrant any interference and prayed for dismissal of the Civil Revision Petitions.

7. Heard the learned counsel appearing for the petitioners as well as the respondents and perused the materials available on record.

8. The respondents have filed I.A. No. 258 of 2012 to reopen the case, I.A. No. 259 of 2012 to issue subpoena to Sub Court at Poonamallee, calling for the papers/case bundles pertaining to O.S. No. 2226 of 1985 and A.S. No.60 of 1990, I.A. No. 260 of 2012 under Order XVIII Rule 17 of C.P.C. to recall respondents' side witness and I.A. No. 261 of 2012 to implead 2nd petitioner, wife of 1st petitioner as 2nd defendant in the suit respectively. As per Order XVIII Rule 17 of C.P.C., the Courts have power to reopen and recall any witness already examined at any stage of the suit. The Court has discretion in this matter. As far as the present proceedings are concerned, it is the case of the petitioners that the suit in O.S. No.2226 of 1985 filed by Logambal, the vendor of the respondent's mother ended in their favour. On

the other hand, it is the case of the respondents that the suit filed by Logamamal was decreed and First Appeal filed by the petitioners was dismissed, directing the petitioners to vacate and deliver vacant possession of the suit property. In such circumstances, the said documents referred to by both the parties are necessary for proper adjudication in the present suit. Further, it is the contention of the learned counsel appearing for the respondents that the judgment in the Second Appeal was set aside and respondents were impleaded as parties in the Second Appeal and after hearing the respondents, the Second Appeal was dismissed on 05.12.2016.

9. In view of the above averments and counter averments made by both the petitioners and respondents, it is just and necessary that oral and documentary evidence are to be let in for proper adjudication. Further, the 2nd petitioner being the defendant in earlier suit filed by Logambal, in the First Appeal and Second Appeal filed by the petitioners, she is proper and necessary party in the present suit. The learned Judge has properly exercised his powers under Order XVIII Rule 17 of C.P.C. and allowed the petitions for

reopening, recalling and impleading the 2nd petitioner as 2nd defendant in the suit. There is no error in the order of the learned Judge warranting interference by this Court.

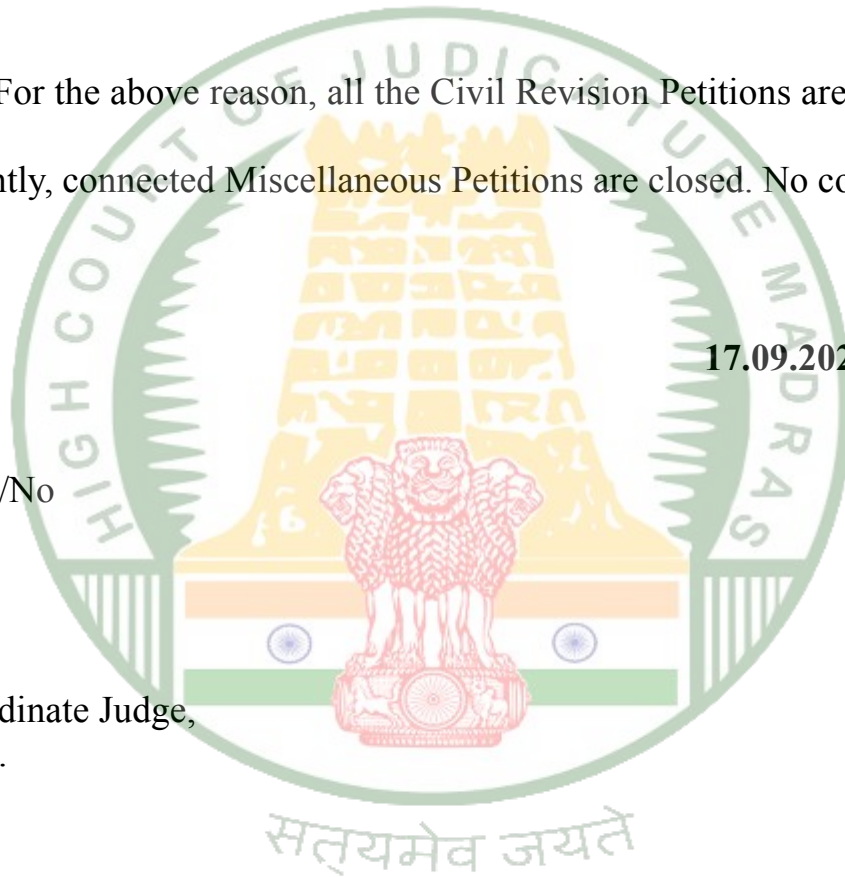
10. For the above reason, all the Civil Revision Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

17.09.2020

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Index: Yes/No

To

The Subordinate Judge,
Tambaram.



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V.M.VELUMANI,J.

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