

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).Nos.925 and 926 of 2017

and

C.M.P.No.4585 of 2017

L.Narayana Reddy

.. Petitioner
(in both C.R.Ps)

Vs.

1.Manjula

Muniappa @ Peddha Muniappa (died)

2.Venkatesh

3.Madhesh

4.L.Muniamma

5.L.Suresh Reddy

6.Jayamma

7.Rathinamma

8.Sumithra

9.Yasodha

10.Nethra @ Nethravathi

11.Lakshamma

.. Respondents
(in both C.R.Ps)

[Cause title in C.R.P.(PD).No.925 of 2017 accepted vide order of this Court dated 22.02.2017 made in C.M.P.No.2895 of 2017 in C.R.P.PD.SR.No.4222 of 2017]

[Cause title in C.R.P.(PD).No.926 of 2017 accepted vide order of this Court dated 22.02.2017 made in C.M.P.No.2896 of 2017 in C.R.P.PD.SR.No.4226 of 2017]

Common Prayer: These Civil Revision Petitions are filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order passed in I.A.Nos.654 and 655 of 2016 in O.S.No.23 of 2009 dated 30.11.2016 on the file of the Sub Court, Hosur at Krishnagiri.

In both cases:

For Petitioner : Mr.R.Jayaprakash

For Respondents : No appearance

COMMON ORDER

The matter is heard through Video Conferencing.

2.The issues involved in both the Civil Revision Petitions are interlinked and hence they are disposed of by this common order.

3.These Civil Revision Petitions are filed to set aside the fair and decreetal order passed in I.A.Nos.654 and 655 of 2016 in O.S.No.23 of 2009 dated 30.11.2016 on the file of the Sub Court, Hosur at Krishnagiri.

4.The petitioner is the 4th defendant, the 1st respondent is the 3rd plaintiff, respondents 2 to 5 are defendants 1 to 3, 5 & 6 and the respondents 6 to 10 are plaintiffs 1, 2, 4 to 6 and the 11th respondent is the 11th respondent in O.S.No.23 of 2009 on the file of the Sub Court, Hosur at Krishnagiri. The 1st respondent and other plaintiffs have filed the suit for partition against the petitioner and other defendants. The petitioner filed written statement and is contesting the suit. Trial commenced. The 1st respondent was examined as P.W.1 and 8th respondent was examined as P.W.2 and suit was posted for further evidence on behalf of the plaintiffs. At that stage, the 1st respondent filed two petitions viz., I.A.Nos.654 and 655 of 2016 to recall and condone the delay in filing the documents. The petitioner opposed both the petitions. The learned Judge allowed both the petitions.

5.Against the said order dated 30.11.2016 made in I.A.Nos.654 and 655 of 2016, the petitioner has come out with both the Civil Revision Petitions.

6.Learned counsel appearing for the petitioner contended that the 1st respondent was examined as P.W.1 and 8th respondent was examined as P.W.2

and they were cross examined. While so, the present petitions to recall and condone and delay in filing the documents of the year 1985 is only to drag on the proceedings. The learned Judge erred in allowing the I.As on the ground that no prejudice would be caused to the petitioner and other defendants, contrary to the judgment of the Hon'ble Apex Court. The learned Judge failed to consider that documents sought to be filed and marked is not necessary. The present petitions are filed only to fill in the lacunae. The learned Judge failed to see that evidence on the side of the plaintiffs is not closed and plaintiffs can mark the documents now sought to be marked through the other plaintiffs and prayed for setting aside the order of the learned Judge passed in I.A.Nos.654 and 655 of 2016 in O.S.No.23 of 2009 and for allowing both the Civil Revision Petitions.

7.Though the learned counsel appearing for the respondents has filed vakalat for the respondents, at the time of hearing, he submitted that he is not appearing for respondents 1, 7 to 10.

8.Heard the learned counsel appearing for the petitioner and perused the entire materials on record.

9.The 1st respondent, the 3rd plaintiff in the suit has filed two I.As for recalling herself and to condone the delay in filing the documents under Order 18 Rule 17 C.P.C and order 7 Rule 14 (1) C.P.C. As per Order 18 Rule 17 C.P.C., Courts have power to recall the witness at any stage of the suit. If recalling any witness and marking documents are necessary to properly appreciate the issues and decide the same, Courts can exercise the power and recall any witness and permit the witness to mark documents. In the present case, evidence on behalf of the plaintiffs is not closed. The 1st respondent was examined as P.W.1 and 8th respondent was examined as P.W.2. Documents sought to be marked is only Original UDR Patta issued by Deputy Tahsildar which of the year 1985. The learned Judge considering the nature of document and also the reasons given by the 1st respondent, allowed both the petitions holding that relevancy of the document can be decided at the time of examination of the witness and after conclusion of the trial. The petitioner have opportunity to object marking of the document and Court has to decide the objection and pass orders. The petitioner also has right of cross examine the 1st respondent when she is recalled and give evidence to mark document. The learned Judge has considered all the objection and allowed both the petitions by giving cogent and valid reason. There is no irregularity or

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illegality in the order passed by the learned Judge warranting interference by this Court.

10.In the result, both the Civil Revision Petitions are dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

21.09.2020

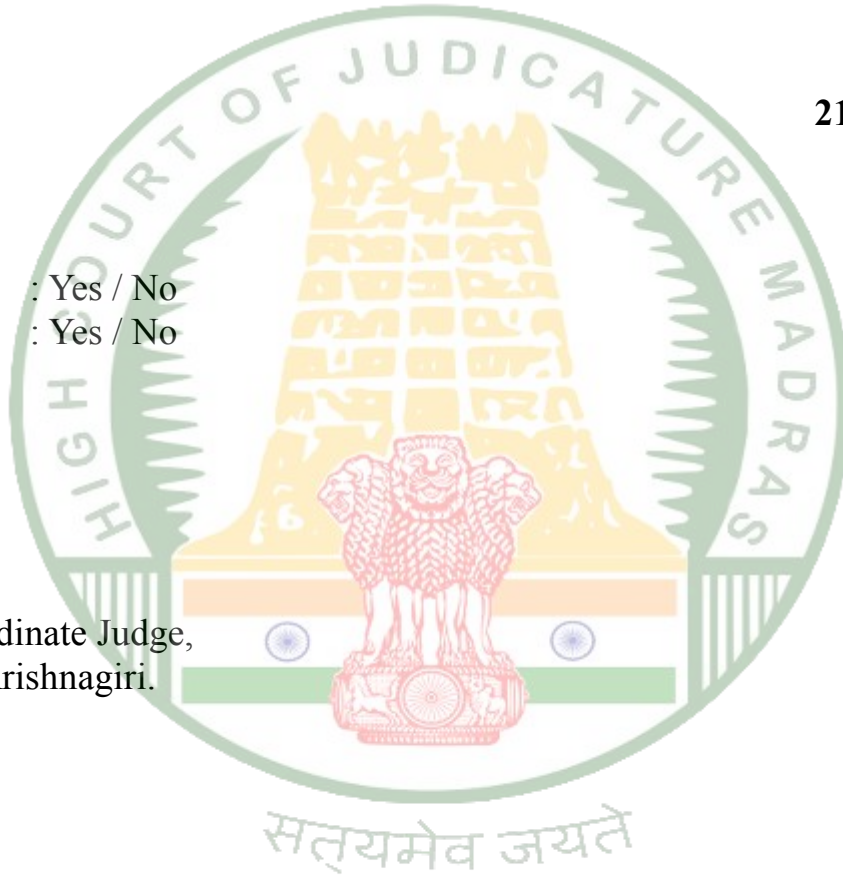
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To

The Subordinate Judge,
Hosur at Krishnagiri.



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V.M.VELUMANI, J.

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