

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.08.2021

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

CRP (PD).No.2204 of 2018
and CMP.No.13906 of 2018

P.Harikrishnan ...Petitioner

Vs

1. M.Settu
2. Valliammal
3. Thamayanthi
4. Mari
5. Angammal
6. Sugumar
7. Murugesan
8. Malar
9. Lakshmi

..Respondents

Prayer:- Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the docket order dated 17.07.2018 made in Memo dated 17.07.2018 in O.S.No.20 of 2012 on the file of Court of the Additional District and Sessions Judge-I, Vellore.

For Petitioner : Mr.T.P.Prabakaran

For Respondents

for R1 to R5 & R7 to R9 : No Appearance

for R6 : Mr.M.S.Subramanian

ORDER

This Civil Revision Petition has been filed to set aside the docket order dated 17.07.2018, made in Memo dated 17.07.2018 in O.S.No.20 of 2012 on the file of the Additional District Judge I, Vellore.

2. The petitioner instituted a suit O.S.No.20 of 2012 against the respondents for specific performance. It appears that the plaintiff gave evidence as PW1 and thereafter his evidence was closed. Subsequently, an application was filed to recall PW1 to give additional evidence. The application was allowed and the plaintiff gave additional evidence on 24.11.2016 and also marked Exs.A10 to A14 and the suit was adjourned to 25.11.2016 for the purpose of cross-examination of PW1. Admittedly, PW1 was absent on 25.11.2016, his evidence was closed and the suit was posted for arguments on 28.11.2016.

3. Since PW1 was not available for cross-examination, a memo was filed by the defendant dated 17.07.2018 to eschew the evidence of PW1 recorded on 24.11.2016. The learned Judge has made an endorsement stating that the memo is taken on file and the memo is recorded. Challenging the same, the present revision has been filed.

4. The learned counsel for the petitioner Mr.T.P.Prabakaran would urge that when PW1 was ready and available for cross-examination, the learned Judge did not provide sufficient opportunity and the further evidence was closed on the very next day. The memo filed by the defendant was taken on file and recorded by the Trial Court, which would preclude PW1 to give further evidence. According to the learned counsel, the impugned order caused prejudice to the petitioner and it is liable to be set aside.

5. Per contra, the learned counsel for the sixth respondent Mr.M.S.Subramanian would submit that the suit was filed for specific performance based on the agreement dated 13.06.2001. Though the plaintiff issued a notice in the year 2004 and suitable reply was given in the year 2004 itself, but the suit came to be filed after lapse of 2 years, i.e., in the year 2006. He further added that the plaint was presented without paying proper Court fee, hence it was returned on 2006. The plaint was re-presented only on 03.10.2007. Again it was returned on 04.10.2007 and thereafter, it was re-presented by paying necessary Court fee on 10.10.2007.

6. According to the learned counsel for the sixth respondent, the plaintiff paid full Court fee only on 10.10.2007, but no application was filed to condone the delay. This Revision is filed only to drag on the proceedings endlessly as he is not interested to pursue the suit. It is also stated that even though the memo was filed and it was taken on file, but no order was passed. This Revision is filed on the apprehension that the further evidence of PW1 dated 24.11.2016 would be eschewed.

7. Heard the learned counsels appearing on either side and perused the materials available on record.

8. In the instant case, it is seen that the petitioner has filed the suit for specific performance and the evidence of PW1 was reopened for giving further evidence. On 24.11.2016, PW1 gave additional evidence and marked documents Exs.A1 to A14. When the suit was adjourned to 25.11.2016 for cross-examination of PW1, he was not present, hence, his evidence was closed and the suit was posted for arguments. It is not in dispute that the petitioner/plaintiff did not file necessary applications to reopen and to recall PW1 for subjecting himself to cross-examination. So the defendants rightly filed a memo to eschew the evidence of PW1 and the memo was recorded on 24.11.2016.

9. As pointed out by the learned counsel for the respondent, the Trial Court has not passed any order and it has only stated that the memo filed is recorded. So it is for the petitioner/plaintiff to file necessary applications before the Trial Court for reopening and recalling PW1 for the purpose of cross-examination. Without doing so, the memo recorded is challenged in this Revision Petition. This Court is of the considered view that the memo recorded by the Trial Court, not only not affected the right of the petitioner and also does not debar him from filing applications for the aforesaid purpose.

10. In such view of the matter, the Civil Revision Petition is disposed granting liberty to the petitioner to approach the Trial Court for redressal of his grievance, if any. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
Speaking Order
pvs

To

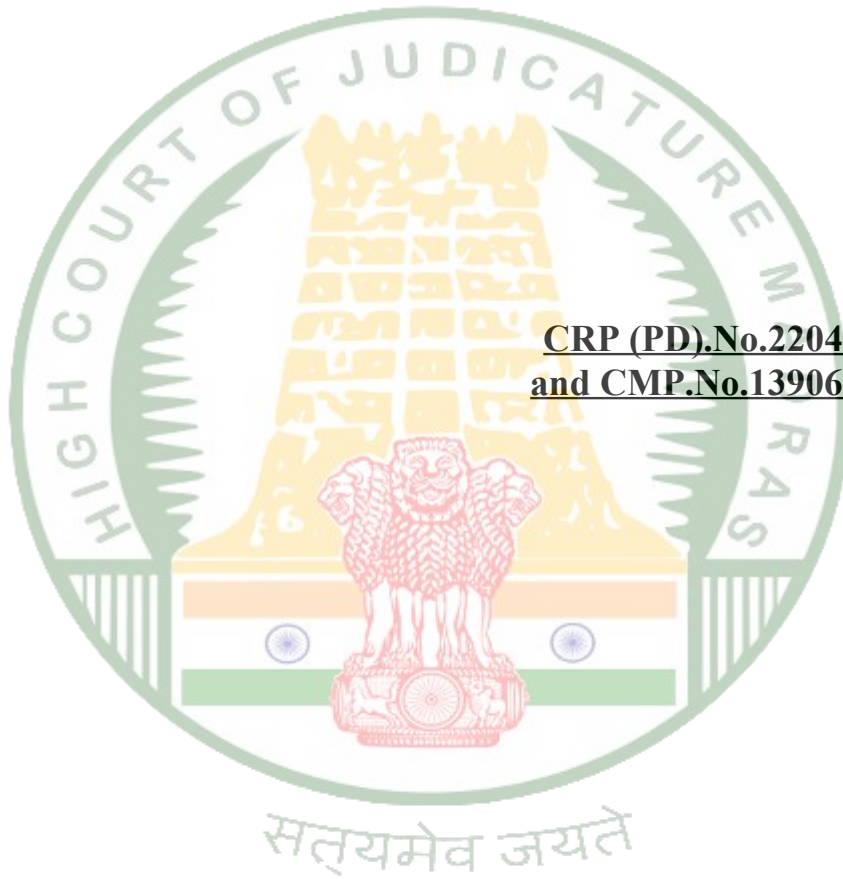
1. The Additional District and Sessions Judge-I,
Vellore
2. The Section Officer,
V.R. Section, High Court, Madras.



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K.KALYANASUNDARAM.J.

pvs



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