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C.R.P.(PD)Nos.892 and 893 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.892 and 893 of 2016
and C.M.P.No.4898 of 2016

V.Ganapathy Chettiar
S/o.Velusamy Chettiar
No.35, Clive street
Cuddalore O.T.
Managing Trustee
A/m.Kasi Viswanathar Temple
Cuddalore O.T.

.. Petitioner
in both CRPs.

Vs.

1.V.Subramanian

2.The Executive Officer
Arulmighu Rajagopalaswamy Temple
Pudupalayam
Cuddalore.

.. Respondents
in both CRPs.

COMMON PRAYER: Civil Revision Petitions filed under Article 227
of the Constitution of India, against the fair and decretal order dated



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19.01.2016 made in un-numbered I.As. in O.S.No.287 of 2008 on the file of the Principal District Munsif Court, Cuddalore.

In both CRPs.

For Petitioner : Mr.T.S.Baskaran

For R1 and R2 : No appearance

COMMON ORDER

Civil Revision Petitions are filed against the fair and decretal order dated 19.01.2016 made in un-numbered I.As. in O.S.No.287 of 2008 on the file of the Principal District Munsif Court, Cuddalore.

2.Issues involved in both the Civil Revision Petitions and the parties are one and the same and hence, they are disposed of by this common order.

3.The petitioner in both the Civil Revision Petitions is the plaintiff and respondents are the defendants in O.S.No.287 of 2008 on the file of the Principal District Munsif Court, Cuddalore. The petitioner filed the said suit against the respondents for declaration that the Managing



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trustee (Chairman of Board of trustees) alone is entitled to administer and manage the petitioner's temple and its properties including collection of rent and for injunction restraining the respondents from interfering in the management of the petitioner's temple and its properties including collection of rent by the Executive Trustee of the petitioner's temple. The respondents 1 and 2 filed separate written statements and are contesting the suit. The trial commenced. When the evidence of D.W.1 was closed on 12.01.2016 and the suit was posted on 19.01.2016 for evidence on behalf of the 2nd respondent, the petitioner filed two applications under Order XVIII Rule 17 and Section 151 of C.P.C. to reopen the evidence and recall D.W.1.

4. According to the petitioner, some important questions were omitted to D.W.1, for that purpose, evidence of D.W.1 has to be reopened and D.W.1 has to be recalled. The petitioner was neither negligent nor wanton in omitting those questions. If the applications are not allowed, he will be put to great loss and hardship.



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5.The learned Judge has taken the applications on file on 14.01.2016 and in the application to reopen, the evidence of D.W.1 held that the suit is of the year 2008, the petitioner is in the habit of allowing evidence to be closed and filing application to reopen the case only to drag on the matter for further several years. In the application to recall D.W.1, the learned Judge has held that already several chances have been given, suit is of the year 2008 and rejected both the applications without numbering, by order dated 19.01.2016.

6.Against the said order of dismissal dated 19.01.2016 made in un-numbered I.As. in O.S.No.287 of 2008, the petitioner has come out with the present two Civil Revision Petitions.

7.The learned counsel appearing for the petitioner contended that after evidence on behalf of the petitioner's side, the suit was posted for defendants' side evidence on 23.06.2015 and on that date, D.W.1 filed proof affidavit. Thereafter, he was absent for number of hearings. The



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counsel for the petitioner cross-examined D.W.1 in part till 30.11.2015 and then on 22.12.2015. D.W.1 was absent for several hearings, evidence of D.W.1 was closed on 06.08.2015 and the suit was posted for evidence on behalf of 2nd respondent to 10.08.2015. At that stage, D.W.1, the 1st respondent herein filed applications on 02.09.2015 under Order XVIII Rule 17 and Section 151 of C.P.C. to reopen and recall his evidence. Subsequently, both the applications filed by the 1st respondent were allowed on 30.10.2015, evidence was reopened, D.W.1 was recalled and suit was posted for further cross-examination of D.W.1 on 06.11.2015. The learned counsel appearing for the petitioner cross-examined D.W.1 in part on 30.11.2015, 05.12.2015 and 22.12.2015. When the suit was posted for further cross-examination on 08.01.2016, D.W.1 was absent and suit was adjourned to 12.01.2016 for further cross-examination of D.W.1. On that date, due to some inconvenience of counsel for petitioner, he requested time for cross-examination. Without considering the same, evidence of D.W.1 was closed and posted for evidence on behalf of the 2nd respondent. Immediately on 14.01.2016, the petitioner filed present



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two applications to reopen and recall D.W.1. The learned Judge without considering the same and without numbering applications, erroneously rejected the same and prayed for setting aside the order of the learned Judge and allowing the Civil Revision Petitions.

8.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

9.Though 2nd respondent has entered appearance through counsel, there is no representation for him, when the matter is taken up for hearing.

10.From the materials on record, it is seen that petitioner has filed two applications and the learned Judge without numbering the same, dismissed both the applications on the ground that petitioner, even after giving several opportunities, has filed the present applications only to



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drag on the proceedings. As per Order XVIII Rule 17 of C.P.C., the Court has power to recall any witness, if the same is necessary for any clarification and to decide the issue in the suit and put question to the witness. In the present case, the learned Judge has not considered whether recalling D.W.1 is necessary or not. Further, the impugned order of the learned Judge is bereft of facts. The learned Judge has held that petitioner is in the habit of allowing the matter to be closed and filing application to reopen the case. The learned Judge has not given any details as to how many times, case was reopened, at the instance of the petitioner. The learned counsel for the petitioner produced a copy of 'A' Diary Extract by way of typed set of papers to show that suit was adjourned on various dates due to absence of D.W.1 and two applications I.A.Nos.672 and 673 of 2015 were filed by the 1st respondent to reopen and recall D.W.1. Without furnishing any details, considering earlier adjournments and numbering the applications, the learned Judge has committed an error in rejecting the present applications. In view of the same, both the impugned orders of the learned Judge dated 19.01.2016



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are set aside and the matter is remanded to the trial Court for fresh consideration. The learned Judge is directed to number both the applications, if they are otherwise in order and after giving opportunity to both the petitioner and respondents, pass orders in accordance with law.

11. With the above directions, both the Civil Revision Petitions are allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

08.12.2021

Index : Yes/No

Internet: Yes/No

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To

The Principal District Munsif
Cuddalore.



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V.M.VELUMANI, J.

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