

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

**C.R.P (PD) Nos. 3963 & 3964 of 2017
and CMP No.18504 of 2017**

CRP (PD) No.3963 of 2017

1.Jeyaraman
2.Alamelu
3.Rajendran
4.Amudha
5.Thilakavathy ... Petitioners

Vs.

Kunjithapatham @ Rajakaliyamoorthy ... Respondent

CRP (PD) No.3964 of 2017

K.Rajendran ... Petitioner

Vs.

Kunjithapatham @ Rajakaliyamoorthy ... Respondent

Prayer in CRP (PD) No.3963 of 2017 :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decree dated 08.06.2017 made in I.A.No.973 of 2016 in O.S.No.240 of 2013 on the file of the District Munsif Court, Jayankondam.

Prayer in CRP (PD) No.3964 of 2017 :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decree dated 08.06.2017 made in I.A.No.974 of 2016 in O.S.No.240 of 2013 on the file of the District Munsif Court, Jayankondam.

For Petitioners : Mr. V.Lakshminarayanan (in both CRPs)

For Respondent : Mr.S.Mahimai Raj (in both CRPs)

COMMON ORDER

These Civil Revision Petitions are filed against the fair and decreetal order dated 08.06.2017 made in I.A.Nos.973 & 974 of 2016 in O.S.No.240 of 2013 on the file of the District Munsif, Jayankondam, thereby dismissing the petitions to re-open and re-call of P.W.1.

2. In CRP No.3963 of 2017, the petitioners are the defendants in the suit filed by the respondent herein for declaration and injunction in respect of the suit property. In CRP No.3964 of 2017, the petitioner is the third defendant and the respondent is the plaintiff in the same suit. Though the petitions have been filed to re-open and re-call only the third petitioner viz., the third defendant in the suit, the fair and decreetal order reveals that as if all the defendants filed a petition to re-open the suit.

3. A perusal of the records reveals that the respondent was

examined as P.W.1 and he was cross-examined on 08.09.2014. After cross-examination of P.W.1, the third petitioner/third defendant filed a petition to receive the documents, which were marked as Exs.B2, B3, B4, B5, B9 & B10. Though, those documents were earlier to the date of cross-examination of P.W.1, on the date of cross-examination those documents were marked and as such, the petitioner could not able to cross-examine the P.W.1 by conferring those documents. The Court below dismissed the petitions to re-open and re-call of P.W.1 only on the ground that the documents Exs.B2, B3, B4, B5, B9 & B10 are prior dated documents on the date, in which the P.W.1 was cross-examined on i.e, 08.09.2014. Admittedly, after the cross-examination of the third defendant, the third defendant filed a petition to receive the documents and the same was allowed. No prejudice will be caused to the respondents by allowing the petition to re-call of P.W.1 for further cross-examination conferring those documents.

5. The learned counsel for the respondent would submit that

though the petition reveals that the third defendant alone filed a petition to re-open and re-call, the fair and decreetal order passed in I.A.Nos.973 & 974 of 2016 show that all the defendants were filed the petition. Now, the first petitioner viz., Jeyaraman died in the year 2018 itself. Even today, the respondents did not take any steps to implead the legal heirs of the deceased first petitioner.

6. A perusal of the re-open and re-call petition filed only by Rajendran show that in fact he only filed a petition to receive those documents and the same was allowed. Therefore, the third defendant alone is permitted to cross-examine in respect of those documents marked as Exs.B2, B3, B4, B5, B9 & B10.

7. In view of the above, the order passed in I.A.Nos. 973 & 974 of 2016, dated 08.06.2017 on the file of the District Munsif, Jayankondam is hereby set aside and these Civil Revision Petitions are allowed. It is made clear that the third defendant viz., Rajendran alone is permitted to cross-examine the P.W.1, that too, only in respect of Exs.B2, B3, B4, B5, B9

& B10 on the date fixed by the Trial Court, on payment of cost of Rs.5,000/- payable by the third defendant to the respondent herein. If the third defendant is failed to cross-examine on the date fixed by the Court below, the Trial Court is directed to proceed with the trial in accordance with law and dispose of the same, within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

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

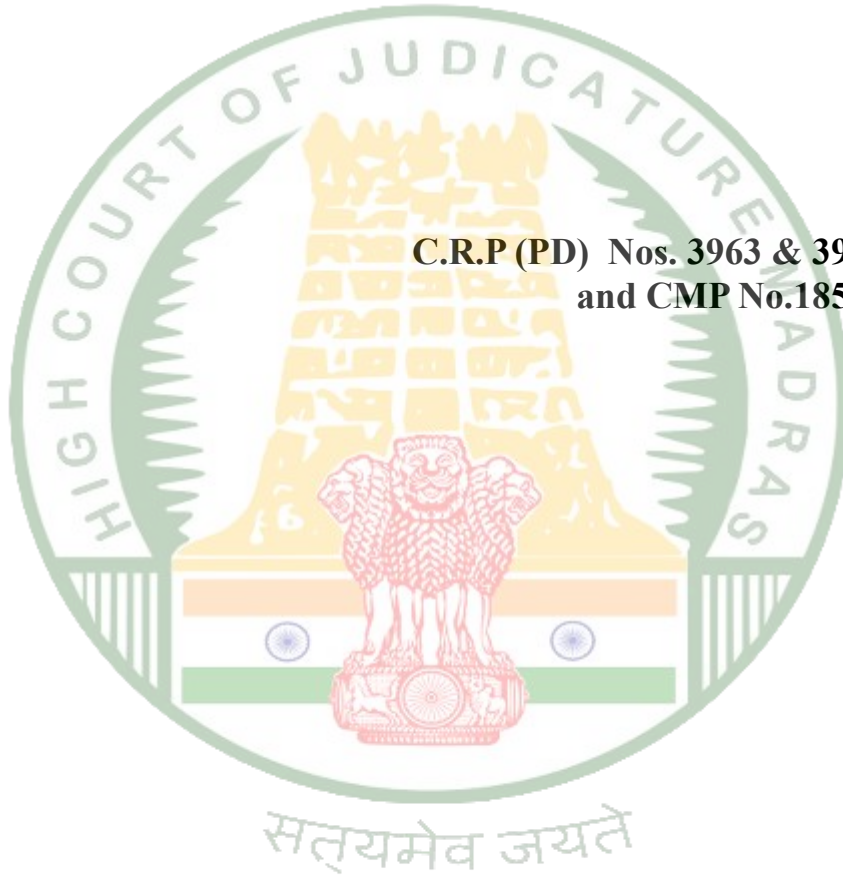
To
The District Munsif,
Jayankondam

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G.K.ILANTHIRAIYAN,J,

C.R.P.(P.D). Nos. 3963 & 3964 of 2017

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