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CRP (PD) Nos.1936 and 1937 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2022

C O R A M

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.R.P (PD) Nos.1936 and 1937 of 2016
and C.M.P.Nos.10097 and 10098 of 2016

1. Jeyalakshmi Ammal

2. M.Jagan

... Petitioners
in both C.R.Ps.

Vs.

1. Rajendran

2. Duddu Vishranthi Ammal

... Respondents
in both C.R.Ps.

PRAYER IN C.R.P.(PD) NO.1936 OF 2016: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order in I.A.No.93 of 2016 in O.S.No.307 of 2007 dated 08.03.2016 on the file of the District Muncif at Arakkonam.

PRAYER IN C.R.P.(PD) NO.1937 OF 2016: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decreetal order in I.A.No.94 of 2016 in O.S.No.307 of 2007 dated 08.03.2016 on the file of the District Munsif at Arakkonam.



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For Petitioners : M/s.V.Raghavachari
in both C.R.Ps.

For Respondents : M/s.P.J.Rishikesh
in both C.R.Ps.

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COMMON ORDER

These Civil Revision Petitions have been filed challenging the fair and final orders passed by the Court below in I.A.Nos.93 and 94 of 2016 filed by the petitioners/ plaintiffs seeking to reopen and recall P.W.3.

2. The plaintiffs filed a suit for the relief of declaration and for permanent injunction. The suit was at the stage of trial and the evidence on the side of the plaintiffs was already completed. While so, I.A.Nos.93 and 94 of 2016 were filed to reopen and recall P.W.3 on the ground that a receipt has to be marked through P.W.3 and that the document is vital for proving the case of the plaintiffs. These applications were dismissed by the Court below through fair and final order dated 08.03.2016 mainly on the ground that the plea that has been taken to reopen and recall P.W.3 is not borne out by the case which has been set up by the plaintiffs and it was also not spoken in the course of examination. Aggrieved by the same, the petitioners/plaintiffs have filed the



present Civil Revision Petitions.

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3. Heard M/s.V.Raghavachari, learned counsel appearing for the petitioners and M/s.P.J.Rishikesh, learned counsel appearing for the respondents.

4. The learned counsel appearing for the respondents resisted these petitions on the ground that the petitioners are trying to fill up the lacuna by recalling P.W.3. That apart, it was also contended that the petitioners are dragging on the case, which is pending from the year 2007 onwards.

5. In the considered opinion of this Court, the Court below did not dismiss the applications filed by the petitioners on the ground that the petitioners are trying to drag on the proceedings. The Court below has rendered a finding to the effect that the evidence of P.W1 and P.W.3 that was already recorded does not anywhere state that the amount was paid to the principal and a receipt was given and hence, to recall P.W.3 for the purpose of marking the receipt is a new case that has been set up by the plaintiffs and hence, on that ground, the Court below rejected the applications.



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6. The purpose for which, P.W.3 is being recalled has been specifically stated in the affidavit filed in support of the applications. Even if the document is marked through P.W.3, it can always be subjected to cross examination and the tenability of the document can always be canvassed by the respondents while arguing their case in the suit. It is not necessary to go into the merits of the plea that was made by the petitioners and it can always be dealt with after the witness is examined and the documents are marked and it will be subject to the final arguments to be made by both the sides in the suit and it will be considered on merits and in accordance with law. Therefore, the Court below need not have gone into the merits of the claim made by the petitioners at the stage of considering the Interlocutory Applications.

7. In the light of above discussions, the fair and final order passed by the Court below in I.A.Nos.93 and 94 of 2016, dated 08.03.2016 is hereby set aside. The Court below shall fix a date for appearance of P.W.3 and recording of evidence of P.W.3 shall be completed on the same day. The suit in O.S.No.307 of 2007 shall be disposed of by the Court below within a period of three months from the date of receipt of the web copy of this order and a compliance report shall be filed before this Court.



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In the result, these Civil Revision Petitions are allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

08.12.2022

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To

The District Muncif at Arakkonam.



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