



C.R.P.Nos.2324 & 2327 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2022

CORAM

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

C.R.P.Nos.2324 & 2327 of 2019
and C.M.P.Nos.15180 & 15205 of 2019

1. A.Zeenathunisa
2. M.H.Rizwan Sheriff
3. M.H.Naziatha Begum

... Petitioners in both
C.R.Ps

Vs.

M.H.Dawood Sheriff

... Respondent in both
C.R.Ps

Common Prayer :- Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the order and decree made in I.A.Nos.1 & 2 of 2019 respectively, in O.S.No.26 of 2013 dated 20.03.2019 on the file of the learned Subordinate Judge at Thiruvallur.

For Petitioners
in both CRPs : Mr.Mohammed Fayaz Ali

For Respondent
in both CRPs : No appearance



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COMMON ORDER

These Civil Revision Petitions have been filed as against the

fair and decreetal order dated 20.03.2019 passed in I.A.Nos.1 & 2 of 2019 respectively, in O.S.No.26 of 2013 on the file of the learned Subordinate Judge, Thiruvallur, thereby allowing the petitions filed by the respondent to reopen and recall P.W.1 to mark the additional documents.

2. The respondent filed suit in O.S.No.26 of 2013 as against the petitioners for partition. When both sides evidences were closed and the matter was posted for argument, the respondent filed petition to re-open and re-call P.W.1 for the purpose of marking certain important documents. Both applications were allowed on condition that the respondent shall pay a sum of Rs.1,000/- as cost within a period of 10 days from the date of the order viz., 20.03.2019 and adjourned the matter on 10.04.2019 for compliance. However, the respondent failed to comply the said condition. In the mean while, the petitioners/defendants challenged the said order in these Civil Revision Petitions.



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3. Heard Mr.Mohammed Fayaz Ali, learned counsel appearing for the petitioners. Though notice served on the respondent and name printed in the caselist, no one is appeared either in person or through pleader.

4. Though the respondent can very well file petition under Order 18 Rule 17 of C.P.C., it can be exercised by the Court either on its own motion or on an application filed by any of the parties, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of examination.

5. In the case on hand, admittedly the respondent failed to ask important question and failed to mark important document. At the time of arguments, the respondent filed these petitions and allowing the petition is nothing but to allow to fill up lacunae. Therefore, the Court below ought not to have allowed the petitions, when the matter was posted for arguments. Hence, the order passed by the Court below is liable to be set aside.



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6. Accordingly, the common order dated 20.03.2019, passed in I.A.Nos.1 & 2 of 2019 in O.S.No.26 of 2013 on the file of the learned Subordinate Judge, Thiruvallur, is hereby set aside. The trial Court is directed to dispose the suit within a period of eight weeks from the date of receipt of a copy of this Order, if not already disposed of.

7. In the result, both the Civil Revision Petitions are allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

19.12.2022

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts



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WEB COPY To

1. The Subordinate Judge,
Thiruvallur.



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G.K.ILANTHIRAIYAN, J.

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