



CRP (MD) Nos.1901 and 1902 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 07.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP (MD) Nos.1901 and 1902 of 2022

and

CMP (MD) No.8569 of 2022

Jason Roy

... Petitioner

Vs

1.P.J.Christoper

2.C.Donnie Serene

3.Lena Josephine

4.The State of Tamil Nadu,
represented by the District Collector,
Kanyakumari @ Nagercoil.

... Respondents

PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the order passed in IA.Nos.4 of 2021 in OS.No.187 of 2014 dated 28.06.2022 on the file of the II Additional Sub Court, Nagercoil.

For Petitioner : Mr.S.C.Herold Singh

For Respondent : Mr.A.Nagarajan

Nos.1 to 3

For Respondent :Mr.S.Sarangan,

No.4 Additional Government Pleader



CRP (MD) Nos.1901 and 1902 of 2022

ORDER

WEB COPY

These Civil Revision Petitions are filed as against the fair and decreetal order in IA.Nos.4 and 5 of 2021 in OS.No.187 of 2014 passed by the learned II Additional Sub Judge, Nagercoil.

2.The petitioner/ plaintiff has filed the above suit for declaration and possession. During his evidence he examined one Town Planning Inspector as PW2 and Municipal Surveyor as PW3. Through PW3 the Municipal Surveyor, the documents Ex.X1 to Ex.X4 were marked. Both side evidence was closed and the case was posted for arguments. At this stage, the petitioner / plaintiff has filed two interlocutory applications in IA.Nos.4 and 5 of 20221 to reopen the case and to recall PW2 for the purpose of getting certain clarification with regard to the documents, which have been marked through PW3. The same were dismissed. Hence these civil revision petitions.

3.The learned Counsel for the petitioner submits that though documents Ex.X2 to Ex.X4 were marked through



CRP (MD) Nos.1901 and 1902 of 2022

PW3/Municipal Surveyor, PW3 is not the competent authority to state anything about the document Ex.X2 to Ex.X4. The competent authority to depose about the said documents is only PW2/ Town Planning Inspector. Since the said documents have been marked through PW3, PW2 is not in a position to clarify those documents. Therefore, the petitioner / plaintiff has filed the above interlocutory applications to reopen and to recall PW2. But the said applications were dismissed by the trial Court without any valid reasons and therefore, the impugned orders are liable to be set aside.

4.The learned Counsel for the respondents submits that the evidence of the plaintiff was closed in the year 2018 itself and thereafter, the case was posted for arguments and after the arguments were advanced, the petitioner has changed the counsel and filed these applications, only to fill up the lacuna, which is not permitted in law. The learned Counsel also relied on a decision of the High Court of Delhi in **Shashi Sehdev Vs Narender Kumar Sharma** [dated 06.07.2022], wherein it has been held as follows:



WEB COPY



CRP (MD) Nos.1901 and 1902 of 2022

"14. The decision in Ram Rati makes it perfectly clear that the recall of a witness is not to be permitted to fill up omission in the evidence already led by the witness or to fill up any lacuna or omission in the evidence of the witness, which has already been recorded."

5.This Court considered the rival submissions and perused the materials placed on record.

6.The petitioner has filed the above interlocutory applications to reopen and to recall PW2 to clarify documents Ex.X2 and Ex.X4, which were already marked before the Court. While dismissing the said applications, the trial Court has also observed that the witness need not be recalled for this purpose and based on the documents which were marked, the petitioner can establish his case.

7.In view of the above discussion, there is no reason to interfere with the orders of the trial Court and it is always open to the petitioner to establish his case through the documents which were already marked before the trial Court at the time of his argument.



CRP (MD) Nos.1901 and 1902 of 2022

8. Accordingly, these civil revision petitions are dismissed. No costs. Consequently connected miscellaneous petition also stands dismissed.

07.11.2022

dsk

Note: Issue order copy on 08.11.2022.

To

II Additional Sub Judge,
Nagercoil.



WEB COPY



CRP (MD) Nos.1901 and 1902 of 2022

B.PUGALENDHI, J.

dsk

**CRP (MD) Nos.1901
and 1902 of 2022**

07.11.2022