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CRP.No.1120 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2023

CORAM:

THE HONOURABLE MRS.JUSTICE **T.V.THAMILSELVI**

CRP.No.1120 of 2023 and

CMP.No.7853 of 2023

Dr.P.Balakrishnan

... Petitioner

Vs.

1.Mohammad Gani
2.H.E.Haroon Mohamed
3.Mohamed Ibrahim Khalifathullah
4.Rihana Benazir
5.Rizwan Mohamed
6.Riyaz Mohamed
7.K.Ismath Batcha
8.Chennai Metropolitan Development Authority,
Rep. by its Chief Executive Officer,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the final and fair order dated 06.02.2023 made in IA.No.2 of 2022 in OS.No.19 of 2011 by the District Munsif Court, Chengalpattu.

For Petitioner : Mr.Balaji Thirumoorthy

For Respondents : M/s.Krithika Kamal



CRP.No.1120 of 2023

ORDER

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Challenging the impugned order dated 06.02.2023 passed in IA.No.2 of 2022 in OS.No.19 of 2011 by the District Munsif Court, Chengalpattu, the first defendant preferred this revision.

2. Before the trial court, the first defendant filed applications to reopen and recall DW2 in order to mark the document which he obtained through RTI. Since after completion of evidence, he filed the said applications and the same was not appreciated by the trial Judge holding that DW2-CMDA official was examined much earlier in the year 2019 and after two years, he filed this application, as such is not permissible and not specifically mentioned about the document he relied to mark through DW2. Accordingly, the petition was dismissed. Challenging the same, the present revision is preferred.

3. The learned counsel for the revision petitioner submits that with regard to issuance of demand notice, pertaining to the allotment of the suit property, at the earlier occasion, he obtained information through RTI. He wants to examine DW2 to that aspect since because they are the author of the document. But the trial Judge partly allowed the application for reopen, but dismissed the application for recall of DW2.



CRP.No.1120 of 2023

4. The learned counsel for the plaintiff submits that the suit was filed in the year 2011 for permanent injunction. Since because they are in possession of the suit property and the defendant caused interference, hence they filed suit. Furthermore, allotment order of the year 2006 stands in their name.

5. But on seeing the fact that from 2011 onwards, the first defendant also contested the suit claiming that at earlier occasion, allotment was made in his favour. He also filed writ proceedings, but the same is now dismissed for default. On filing of the suit, he filed two applications, one application was dismissed for default and another one dismissed. But now with regard to restore the same, he also filed restoration application. With regard to the allotment of the property, there is a dispute pending between the parties. So to prove his defence, opportunity has to be given to the first defendant. However, the trial court partly allowed and not permitted to examine DW2 as such, it is untenable for the reason that with regard to the document obtained through RTI is to be elicited from the mouth of DW2, who is the right person to speak about the same.

6. Therefore, the findings of the trial Judge with regard to IA.No.2 of 2022 is set aside and IA.No.2 of 2022 is also allowed. However as per the submissions of both the counsels, now the case is reserved for judgment.



CRP.No.1120 of 2023

Therefore, the trial Judge is directed to give one more opportunity to the defendants to examine DW2, so as to enable DW1 to produce those documents.

He is also directed to serve hand summon to DW2 and cross examine the witness on the same day when he appears. The trial Judge is also directed to complete the suit proceedings within a period of four weeks from the date of receipt of this order.

7. With the above directions, this civil revision petition is disposed of. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

06.04.2023

Index :Yes/No
Internet : Yes/No
Speaking order/non-speaking order
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CRP.No.1120 of 2023



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CRP.No.1120 of 2023

T.V.THAMILSELVI, J.

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To

- 1.The District Munsif Court,
Chengalpattu.
- 2.Chief Executive Officer,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008

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