



C.R.P.(PD) Nos.1182 and 1183 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.04.2023

Pronounced on : 28.06.2023

CORAM:

THE HONOURABLE DR.JUSTICE D.NAGARJUN

C.R.P.(PD) Nos.1182 and 1183 of 2023 and
C.M.P.Nos.8149 and 8151 of 2023

Girish Jain

... Petitioner in both C.R.Ps.

Vs.

1. Bhoobalan
2. Manoharan
3. Eswari
4. Panchali
5. Ganesh
6. Vijayakumar

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

Common Prayer: The Civil Revision petitions filed under Article 227 of Constitution of India, seeking to set aside the order dated 07.02.2022 passed by the Principal Subordinate Court at Ponneri in I.A.Nos.127 of 2021 in O.S.No.5 of 2014 and I.A.No.126 of 2021 in O.S.No.5 of 2014 and thereby to allow the said application.

For Petitioner
in both C.R.Ps. : Mr.Krishnasamy.R

For Respondents
in both C.R.Ps. : Mr.N.Nithianandam



C.R.P.(PD) Nos.1182 and 1183 of 2023

WEB COPY

COMMON ORDER

These two revisions are filed by the petitioner /3rd defendant, challenging the order of dismissal of the Interlocutory Applications in I.A.Nos.127 and 126 of 2021 in O.S.No.5 of 2014, dated 07.02.2022 on the file of the learned Principal Subordinate Judge, Ponneri, to recall and reopen the evidence of PW1.

2. Both the orders are connected to each other in the same suit and hence both the Civil Revision Petitions are disposed of by way of common order.

3. The respondents/plaintiffs have filed a suit seeking partition of the schedule of properties and to declare certain sale deeds as null and void. The pleadings in O.S.No.5 of 2014 would go to show that one Kannaiah Naicker has sold away the property without any right or title to the 2nd defendant through a registered Sale deed, dated 17.04.1989. The 2nd defendant has in turn sold away the suit property to the 3rd defendant under registered sale deed, dated 28.01.2006. It is the case of the



C.R.P.(PD) Nos.1182 and 1183 of 2023

respondents/plaintiffs that they gets 3/4 share in the schedule of property, thereby they sought for partition and separate possession to settle 3/4 share of the schedule of properties and to declare the sale deeds executed by Kannaih Naicker and the sale deed executed by the 2nd defendant in favour of the 3rd defendant as null and void.

4. As the defendants 1 and 2 have not appeared, they were set exparte and the 3rd defendant who has purchased the property alone is contesting the suit. The 2nd plaintiff has produced before the Court as P.W.1 and he was cross examined by the petitioner/3rd defendant. On closure of evidence by the plaintiffs, the 3rd defendant asked to produce the evidence. At this juncture, the petitioner has filed the applications in I.A.Nos.126 and 127 of 2021 in O.S.No.5 of 2014 to recall and reopen P.W.1 for further cross examination by the petitioner / D3. After full-fledged enquiry, the same came to be dismissed. Aggrieved by the same, the present petition has been filed.



WEB COPY

5. Heard both sides and perused the materials available on record including the orders passed in both interlocutory applications.

6. One of the grounds on which the trial Court has dismissed the applications is that the affidavit of the petitioner/ D3 to cross examine P.W.1 is very vague and there is no specific reason. The petitioner/ D3 has mentioned in the affidavit filed in support of his application for recalling P.W.1 for further cross examination that certain vital questions are required to be put to P.W.1. As rightly submitted by the counsel for the respondents, the petitioner is not clear as to what purpose and what type of question the petitioner / D3 intends to put to P.W.1. Further it is to be seen that it is not mandatory for the petitioner / D3 to disclose the type of questions arise for cross examination which he intending to put to P.W.1. In case, the petitioner/D3 discloses the question which he likely to be put to P.W.1, certainly the witness get himself ready with the suitable answer thereby the very purpose of seeking the witness for cross examination of P.W.1 would be defeated. Therefore this Court is not in agreement with the observation



C.R.P.(PD) Nos.1182 and 1183 of 2023

of the trial Court that since the affidavit is not clear as to what type of questions the petitioner/D3 is intending to be put to the witness during cross examination.

7. This is a case where, D1 and D2 have sold the properties in favour of the contesting D by mentioning in the sale deeds that they are the exclusive owners of the schedule of properties. Interestingly, the suit was filed by their family members seeking partition of the schedule of property, wherein the defendants 1 and 2 have sold the property to the petitioner / D3, and they remained exparte. Without contesting the suit and without asserting about their right in selling the property in favour of D3, it may be on account of collusion between the petitioner and D1 and D2. Ultimately the burden heavily lies on the petitioner/D3 as the D3 not only defend for himself but to defend on behalf of D1 and D2 as well. In case if the Court declares the suit schedule property is a part of joint family property, then D3 will loss his right over the property. He is the only contesting defendant.



8. The case is posted for evidence on behalf of the defendants and even before the defendants have started their evidence, the petitioner / plaintiff filed petitions seeking to reopen the plaintiffs' side evidence and to permit him to cross examine P.W.1. Therefore, the circumstances placed before the Court would conclude that the petitioner/D3 has filed the application seeking to reopen and recall the witness not at belated stage. In case if the request of the petitioner/D3 is declined, according to the petitioner, lot of prejudice would be caused to the petitioner/plaintiff.

9. Further in a case like this when the rights of the parties in respect of immovable properties are invoked, it is always required to give a long rope to both parties and permit and them to produce all the evidence either orally or documentary, liberally in order to resolve the issues completely at once. If the parties are not allowed to adduce evidence and issues are decided premature without giving an opportunity to the parties, the dispute between the parties will not be resolved and it may likely to lead multiplicity of litigation. Therefore, when the parties approached the Court with the relief like recalling the witness for limited purpose of cross



C.R.P.(PD) Nos.1182 and 1183 of 2023

examination when it is not a belated one, the same should be considered favourably. Hence, this Court is of the opinion that one more opportunity can be given to the petitioner / D3 to cross examine P.W.1.

10. In the result, the Civil Revision Petitions stand allowed. The orders passed by the trial Court in I.A.Nos.126 and 127 of 2021 in O.S.No.5 of 2014 dated 07.02.2022 are hereby set aside and the trial Judge, viz., the Principal Subordinate Judge, Ponneri is directed to permit the petitioner / D3 to further cross examine P.W.1. The learned trial Judge is directed to fix a specific date which is convenient to both parties and witnesses and permit the petitioner / D3 to further cross examine P.W.1. The petitioner/D3 is directed to complete the cross examination at once on the very same date and the trial Court shall complete the rest of the trial as expeditiously as possible. No costs. Consequently, connected miscellaneous petitions are closed.

28.06.2023

vum

Index: Yes/No

Speaking order / Non speaking order



WEB COPY

To

The Principal Subordinate Court at Ponneri



C.R.P.(PD) Nos.1182 and 1183 of 2023

DR.D.NAGARJUN, J.

vum

C.R.P.(PD) Nos.1182 and 1183 of 2023 and
C.M.P.Nos.8149 and 8151 of 2023

28.06.2023