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CRP(PD)Nos.2153 to 2155



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

**C.R.P.(PD)Nos.2153 to 2155 of 2019
and C.M.P.Nos.13871, 13874, 13876 & 13894 of 2019**

1.Kaliyaperumal
2.Rajendran
3.Rajadurai

... Petitioners in
all the three CRPs.

Vs.

1.Kolanjinathan
2.Dakshinamurthy
3.Baskaran

... Respondents in
all the three CRPs.

Common Prayer: Civil Revision Petitions are filed under Article 227 of the Constitution of India against the fair and decretal order dated 21.02.2019 made in I.A.Nos.402, 401 & 403 of 2018 in O.S.No.308 of 2015 on the file of the Additional District Munsif Court, Cuddalore.

In all the three CRPs.

For Petitioner : Mr.J.Pradeep



COMMON ORDER

These revisions arise against an order passed by the learned Additional District Munsif at Cuddalore in dismissing the applications filed in I.A.Nos.401 to 403 of 2018 in O.S.No.308 of 2015.

2. The defendants 1, 2 & 5 are the revision petitioners. They had filed applications in I.A.No.401 of 2018 to re-open the case to recall D.W.1, the 1st defendant, I.A.No.402 of 2018 to mark the document and I.A.No.403 of 2018 to receive the document. The document that sought to be marked was the judgment and decree in O.S.No.1 of 2018 on the file of the District Munsif Court-cum-Judicial Magistrate's Court, Valangaiman, dated 31.08.2018. The grounds on which the applications were dismissed, were on two fold:

- (i) The averment was not stated in the written statement and
- (ii) It amounts to filling up the lacunae in the case.

3. In so far as the first ground is concerned, the demand by the trial Court is impossible, because the written statement was filed in September 2016, whereas the decree in O.S.No.1 of 2018 came to be passed in the year 2018. The 1st defendant could not have pleaded about the decree and judgment in the suit, as on the date on which he filed written statement, the said judgment and decree was not in existence. On the second ground, it amounts to filling up the lacunae, the matter is still pending



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trial. The Code of Civil Procedure is not a legislation meant to punish litigants. The trial Court is the First Court of law and fact and whatever evidence is available to a litigant should be brought forth before that Court. By giving an opportunity to the petitioners, no prejudice would have been caused to either party, because the document that relied upon is the judgment and decree of the regularly constituted Court. The question of relevancy for filing the document etc., always falls within the scope of marshalling of evidence. Therefore, I do not need to punish the petitioners for producing the document, which has come into existence after presentation of the plaint and after filing written statement, in fact it might have a vital impact, as pleaded by the defendants, on the outcome of the suit.

4. In fine,

(i) The orders dated 21.02.2019 passed in I.A.Nos.401 to 403 of 2018 in O.S.No.308 of 2015 on the file of the Additional District Munsif Court, Cuddalore, are set aside and the Civil Revision Petitions are allowed.

(ii) The trial Court is directed to give an opportunity to the revision petitioners on 16.08.2023. On that day, the petitioners will examine the 1st defendant/DW1, mark the document and close his side. Since the permission is granted only to get the judgment and decree in the suit, there need not be lengthy cross-examination for the said purpose. If the learned counsel for the plaintiffs requests time to cross-examine, the Court below can grant him an opportunity.



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(iii) In any event, the evidence of D.W.1 shall be completed on or before 31.08.2023 and the judgment in the suit O.S.No.308 of 2015 shall be pronounced by 30.09.2023. No costs. Consequently, connected Miscellaneous Petitions are closed.

11.07.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

Note:Issue order copy on 11.07.2023

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To

The Additional District Munsif, Cuddalore.



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V.LAKSHMINARAYANAN,J.

Kj

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