



CRP.Nos.3774 & 3777 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.Nos.3774 and 3777 of 2023

and

C.M.P.Nos. 23475 & 23481 of 2023

G.Meganathan

... Petitioner in
both C.R.P.s

-Vs-

1.Arulmighu Sri Mannarsamy and
Pachaiyamman Koil (Popularly
called as Mannarsamy Temple)
Rep.by its Hereditary Trustee
Sugumar Kuppusamy

2.G.Srinivasan

3.The Assistant Commissioner
HR & CE (Administration)
Department, Chennai - 600 034.

... Respondents in
both the CRPs

Prayer in C.R.P. No. 3774 of 2023: Civil Revision Petition is filed under Article 227 of Constitution of India, praying to set aside the fair and decretal order dated 22.08.2023 passed in I.A. No.14 of 2023 in O.S. No.412 of 2016 by the Hon'ble XV Assistant City Civil Judge at Chennai.



CRP.Nos.3774 & 3777 of 2023

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Prayer in C.R.P. No. 3777 of 2023: Civil Revision Petition is filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 22.08.2023 passed in I.A. No.13 of 2023 in O.S. No.412 of 2016 by the Hon'ble XV Assistant City Civil Judge at Chennai.

For Petitioner : Mr.D.Madhusudanan
For Respondents : Mr. V.Jeevagiridharan,
Addl. Govt. Pleader for R3

COMMON ORDER

Challenging the impugned orders passed in I.A.Nos.14 and 13 of 2023 in O.S.No.412 of 2016 dated 22.08.2023 passed by XV Asst. City Civil Judge, Chennai, the Revision Petitioner/1st defendant preferred these Civil Revision Petitions.

2.Since the relief claimed challenging the impugned orders passed by the trial judge, notice to the respondents 1 and 2 is dispensed with.

3. Before the trial court, the Revision Petitioner contested the suit filed by the plaintiff by filing a written statement in the year of 2016 itself. Issues were framed and the trial was begun. Plaintiff side evidence was



CRP.Nos.3774 & 3777 of 2023

completed and when the case was posted for defendants side evidence, he filed an application to issue subpoena to examine the Tahsildar, but the said witness was not turned up. So, the Court insisted him to produce the witness warrant, for which the counsel for 1st defendant not able to submit his submission as he was engaged in funeral of his close relative. Thereafter, as the steps was not taken to secure the witness, the evidence was closed and to reopen and to recall the defendants' side evidence, the 1st defendant filed two applications in I.A.Nos. 13 and 14 of 2023. On considering his submissions, the trial judge dismissed the applications stating that nearly about 7 years, the case is pending, but the 1st defendant is not cooperating with the proceedings. Challenging the same, the present Civil Revision Petition has been filed.

4. However, the learned counsel for 3rd respondent appeared, but the learned counsel for Revision Petitioner would submit that before the trial court, the 3rd respondent/3rd defendant remain exparte, but on seeing the fact that the suit was filed by the temple as a plaintiff. So, the learned Government Pleader is appearing for 3rd respondent is directed to appear before the trial court and follow the proceedings by filing necessary application to set aside the order.



CRP.Nos.3774 & 3777 of 2023

5. On seeing the facts and records, it reveals that the case was adjourned from 02.06.2023 to 20.06.2023 to take steps to secure the witness. Furthermore, on the closure of evidence, the 1st defendant taken steps to examine the Tahsildar, thereby he filed an application to secure the witness immediately after the closure of plaintiff side evidence. Not only that, in the year of 2016 itself, this defendant filed a written statement, which itself shows that he is inclined to contest the suit from the year of 2016. As he has not taken steps to produce the witness on one occasion, the trial judge closed the entire evidence and opportunity was not given to this defendant to defend his case and the case is now posted for arguments. Before the trial court, if proper opportunity is not given to this defendant to defend his case, then his valuable right to defend the case will be defeated. Furthermore, this court does not find any malafide intention on the part of 1st defendant, but without appreciating all the facts and circumstances the trial judge erroneously passed an order by closing the evidence on the 1st defendant side, as such is liable to be set aside and it would also shows that the trial judge passed the said order without application of judicious mind. Therefore, this court is inclined to set aside the findings rendered by the trial judge in I.A.Nos. 13 and 14 of 2023 in



CRP.Nos.3774 & 3777 of 2023

O.S.No.412 of 2016 and the applications to reopen and recall are allowed.

The trial judge is directed to give opportunity to the 1st defendant to adduce evidence on his side and if any witness produced, liberty is given to the plaintiff to cross-examine the witness. Accordingly, these Civil Revision Petitions are allowed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

17.10.2023

Index : Yes/No

Speaking Order : Yes/No

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To

1. The XV Assistant City Civil Judge, Chennai.
- 2.The Assistant Commissioner
HR & CE (Administration)
Department, Chennai - 600 034.
3. The Section Officer, V.R.Section
High Court, Madras.



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CRP.Nos.3774 & 3777 of 2023

T.V.THAMILSELVI, J.

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C.R.P.Nos.3774 & 3777 of 2023

17.10.2023