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C.R.P. Nos. 958 & 959 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

C.R.P. Nos. 958 & 959 of 2019

1.C. Subbarayan
2.S. Murugan
3.S. Narayanan
4.S. Balakrishnan

... Petitioners
in both CRPs

Vs.

1.A. Seethapathi
2.Thota Krishnaje
3.Mohammad Ismail
4.R. Saleem

... Respondents
in both CRPs

Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 21.08.2018 made in I.A. Nos. 1325 & 1326 of 2017 respectively in O.S. No. 486 of 2011 on the file of the learned Additional District Munsif Court, Alandur.

For Petitioners : Mr. R. Vijayaraghavan

For Respondents : No Appearance

ORDER



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WEB COPY C.R.P. No. 958 of 2019 has been filed against the order dated 21.08.2018 in I.A. No. 1325 of 2017 in O.S. No. 486 of 2011 on the file of the Additional District Munsif Court, Alandur, to re-open the evidence of P.W.1.

2. C.R.P. No. 959 of 2019 has been filed against the order dated 21.08.2018 in I.A. No. 1326 of 2017 in O.S. No. 486 of 2011 on the file of the Additional District Munsif Court, Alandur, to re-call the evidence of P.W.1 for effective trial of the suit.

3. The petitioners herein are the plaintiffs in the suit in O.S. No. 486 of 2011 and the respondents herein are the defendants in the said suit. The suit filed by the plaintiffs to declare that the sale deed dated 04.05.2011 registered as document No. 2697 of 2011 in the office of the Sub Registrar, Neelangarai executed by the first defendant in favour of the second defendant is null and void.



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4. According to the petitioners, the suit was posted for defendants' side evidence. At that stage, the petitioners filed the petitions which were dismissed by the Court holding that these petitions are filed by the petitioners only to drag on the proceedings as this suit is pending for D.W.1 cross. Aggrieved by the dismissal order, the present civil revision petitions have been filed.

5. Heard the learned counsel for the petitioners and the learned counsel for the respondent No.2.

6. Learned counsel for the petitioners submit that the respondents 1, 3 and 4 are not contesting parties in the civil revision petitions and already they were set ex parte in the suit proceedings itself and requested to proceed with the matter.

7. Learned counsel for the petitioner submits that the defendant No. 2 fraudulently purchased the suit schedule property by forging the parent document of the suit schedule property namely the Document No. 3641 of



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1980 dated 11.11.1980. During the cross examination of P.W.1, the counsel for the plaintiff intends to produce the original parent document dated 11.11.1980 by filing I.A. No. 1735 of 2013. The trial Court directed the plaintiff to produce the said parent document dated 11.11.1980 and accordingly, he produced the same on 14.02.2014 vide S.R. No. 2644 of 2014. The said document is under the custody of the Court without marking the same on behalf of the plaintiff side or as Court document. Now the Court posted the matter for cross of D.W.1. At that juncture, for the purpose of establishing the case on the side of the plaintiff and also to prove that the document dated 11.11.1980 filed by the defendant is fake document, it is just and necessary that the parent document (sale deed) dated 11.11.1980 bearing the Document No. 3641 of 1980 to be marked as exhibit on plaintiff side. The learned counsel further contends that for the purpose of marking the said sale deed, it is just and necessary that P.W.1 has to be recalled and evidence of P.W.1 has to be reopened. The learned counsel further contends that the trial Court without considering the fact erroneously dismissed the petitions filed by the petitioners to reopen the evidence of P.W.1 and to recall to adduce further evidence for proper adjudication of the case.



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Accordingly, the learned counsel for the petitioner sought to set aside the order of the said trial Court and to allow the civil revision petitions.

8. On behalf of the respondent No. 2 , though there is appearance made by one advocate, there is no representation when the case is taken up for hearing. Infact, on perusal of the orders of the trial Court in I.A. Nos. 1325 and 1326 of 2017, it appears that on behalf of the defendants side, as per their endorsement dated 24.07.2018, there is no counter on behalf of them. Considering this fact, this Court is proceeding with this case based on the material available on record.

9. Having heard the submissions of the learned counsel for the petitioners and on careful perusal of the material available on record, it appears from the order passed by the trial Court in two interlocutory applications filed by the petitioners, that the parent document dated 11.11.1980 produced by the plaintiff before the trial Court as per the order in I.A. No.1735 of 2013 but the said document was not marked as exhibit on behalf of the plaintiff or as Court document but it is kept under the



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custody of the Court. At that stage, the plaintiff intends to prove that the said document is fake one and to mark the said document on his behalf as exhibit, the plaintiffs filed an application to reopen the evidence of P.W.1 and to recall P.W.1 for further evidence.

10. As stated by the learned counsel for the petitioner, the said parent document dated 11.11.1980 was not marked on behalf of the plaintiff side. It appears during the cross examination of P.W.1, the learned counsel for the defendant wanted to produce the original parent document dated 11.11.1980 by filing I.A. No.1735 of 2013 and as per the order of the trial Court, the same was produced on 14.02.2004 before the trial Court. The said document is under the custody of the Court without marking the same on behalf of the plaintiff side or as Court document. To mark the said document on behalf of the plaintiffs, the petitioners filed this petitions. But the trial Court considering only reason that the suit is pending for D.W.1 cross, came to an conclusion that the petition is filed only to drag on the proceeding and dismissed the same.

11. Admittedly, the document which is sought to be marked by the



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plaintiffs is a crucial document for proper adjudication of the case. As and when the petitioners are claiming to mark the said document on their behalf as exhibit, the Court ought to have permit them to mark the same on behalf of the plaintiffs' side. No prejudice will be caused to the defendants, if the said document is marked as exhibit and it appears that due to that reason only they made endorsement of no counter in the said interlocutory applications.

12. Under these circumstances, this Court is of the considered opinion that for better and proper adjudication of the issue involved in the suit, it is appropriate and reasonable to consider the request of the plaintiffs instead of dismissing their applications.

13. As such, in our considered view, the order dated 21.08.2018 passed by the trial Court in I.A. No.1325 of 2017 and I.A. No. 1326 of 2017 respectively in O.S. No. 486 of 2011 will not sustain in law. Accordingly, it is liable to be set aside.

14. In the result, the Civil Revision Petitions are allowed and the order



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dated 21.08.2018 in I.A. No.1325 of 2017 and I.A. No. 1326 of 2017

respectively in O.S. No. 486 of 2011 on the file of Additional District Munsif

Court, Alandur is set aside.

15. There shall be no order as to costs.

30.07.2024

Index : Yes / No

Neutral Citation : Yes / No

AT

To

The Additional District Munsif Court, Alandur.



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