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Civil Revision Petition Nos.2099, 2100 and 2102 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2024

CORAM :

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Civil Revision Petition Nos.2099, 2100 and 2102 of 2024
and C.M.P.Nos.11187, 11195 and 11199 of 2024

Jayaprakash

.. Petitioner in
all the C.R.P.'s

Versus

L.R.Munusamy Naidu

.. Respondent in
all the C.R.P.'s

Prayer in C.R.P.No.2099 of 2024: Civil Revision Petition filed under Article 227 of the Constitution of India, to direct the learned District Munsif, District Munsif Court, Ponneri, Thiruvallur District, to remove xerox copy of the document marked as Ex.A10 in the O.S.No.112 of 2014 pending on the file of the District Munsif Court, Ponneri, Thiruvallur District.

Prayer in C.R.P.No.2100 of 2024: Civil Revision Petition filed under Section 151 of CPC, to set aside the fair and decreetal order dated 04.03.2024 passed in I.A.No.11 of 2023 in O.S.No.112 of 2014 on the file of the District Munsif Court, Ponneri, Thiruvallur District.

Prayer in C.R.P.No.2102 of 2024: Civil Revision Petition filed under Section 151 of CPC, to set aside the fair and decreetal order dated 04.03.2024 passed in I.A.No.12 of 2023 in O.S.No.112 of 2014 on the file of the District Munsif Court, Ponneri, Thiruvallur District.

In all the C.R.P.'s:



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For the Petitioner : Mr.K.Vasanthanayagam
for Mr.M.P.Rajendran
For the Respondent : Mr.K.Balaji

COMMON ORDER

The petitioner/defendant in O.S.No.112 of 2014 has filed I.A.Nos.11 and 12 of 2023 seeking to recall and reopen the plaintiff side evidence for cross examination of P.W.1 and the said applications were dismissed by an order dated 04.03.2024 against which the C.R.P.Nos. 2100 and 2102 of 2024 have been filed to reopen and recall P.W.1 and C.R.P.No.2099 of 2024 filed to remove xerox copy of the document marked as Ex.A10 in the O.S.No.112 of 2014.

2. The contention of the learned counsel for the petitioner is that the petitioner is the defendant in the suit and the plaintiff is his half brother. Both the petitioner and the respondent have common father but different mother. During cross examination of D.W.1 on 03.03.2023, the respondent/plaintiff marked an exhibit Ex.A10, a photostat copy of document. Though the petitioner/defendant raised objection, the same was allowed to be marked and that too during cross examination. The said document neither enclosed in the



plaint nor adverted in the proof affidavit. Only during the cross examination, the photostat copy marked as Ex.A10.

3. The learned counsel for the petitioner would further submit that the petitioner contention is pervading and initially claims that he was taking care of entire family expenses and repaid the loan availed from State Bank India and redeemed the property from the Bank. On the other hand, he claims that he was doing his own business, dealing in groundnut and paddy and it was his father, who is carrying out the agricultural activities. The Ex.A10 is a debt related notice and the receipts showing its repayment. Therefore, the original of Ex.A10 to be produced to check its genuineness, further to get certain clarifications about plaintiff's claim. Hence, the petitioner filed the applications to recall and reopen the P.W.1 evidence.

4. The learned counsel appearing on behalf of the respondent submitted that while marking the Ex.A10 photostat copy of the document through D.W.1, at that time, the petitioner/defendant raised no objection and it was marked. If the petitioner had any explanation, to offer while marking the said document nothing stopped him from giving such explanation and the same could have been recorded. Further, he had an opportunity to clarify in re-



examination. Now, as an after thought, to create a new defence the petitioner filed a petition to recall and thereafter Civil Revision Petitions.

5. He further submitted that the Trial Court considered the facts and circumstances of the case and rightly dismissed the applications. The learned counsel for the respondent/plaintiff confirm original of Ex.A10 is with him and he is ready to produce the same before the Trial Court, on verification the same can be substituted and marked in the place of Ex.A10.

6. The learned counsel for the petitioner has no objection in substituting the original document as Ex.A10.

7. Heard the learned counsel for the petitioner as well as the learned counsel appearing on behalf of the respondent and perused the material records of the case.

8. On the submission and perusal of documents it is seen that the prayer is recalling and reopening the plaintiff side evidence for cross examination of P.W.1 necessity does not arise. If at all, the petitioner has to give explanation as regards Ex.A10, it is for him to file an appropriate application to examine D.W.1. Now, the suit stands posted for arguments. The learned counsel for the respondent/plaintiff is directed to mark Ex.A10 –



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original document by substituting the photostat with original. Thereafter, the petitioner is at liberty to reopen the evidence of D.W.1, if he so desires and he can give his explanation. The said process of reopening the evidence of D.W.1 to be completed within a period of two weeks from 01.08.2024. Since the case stands posted on that date and the case is at the stage of arguments, thereafter, the proceedings in O.S.No.112 of 2014 to be completed within a period of 30 days there off. The order dated 04.03.2024 passed in I.A.Nos.11 and 12 of 2023 in O.S.No.112 of 2014 on the file of the District Munsif Court, Ponneri, Thiruvallur District shall stand modified to the above extent.

9. With the above directions, the Civil Revision Petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

29.07.2024

Index : Yes / No

Internet: Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

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Note:- Issue order copy on 30.07.2024.



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M.NIRMAL KUMAR, J.,

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To
The District Munsif
District Munsif Court, Ponneri, Thiruvallur District,

Civil Revision Petition Nos.2099, 2100
and 2102 of 2024

29.07.2024