



C.R.P.Nos.2990 & 2994 of 2022 &
C.M.P.Nos.16189 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.Nos.2990 & 2994 of 2022 &
C.M.P.No.16189 of 2022

1.Y.V.Uma Maheswaran
2.Y.L.Prasunna Bharathi

... Petitioners in both C.R.Ps.

-Versus-

1.S.Arunachalam
2.S.R.Venkataraman
3.The Sub-Registrar,
Thousand Lights,
Teynampet, Chennai.

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

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India against the order dated 25.07.2022, passed in I.A.No.1 of 2022 & I.A.No.2 of 2022 in O.S.No.1026 of 2015 pending on the file of the II Additional City Civil Court in Chennai.

For Petitioners : Ms.R.V.Gayatri

*For Respondents : Ms.S.Revathi for
1 & 2 M/s.S.Udhayakumar*

*For Respondent 3 : Dr.Suriya,
Additional Government Pleader*



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COMMON ORDER

These Civil Revision Petitions arise against the orders passed in I.A.No.1 of 2022 and I.A.No.2 of 2022 in O.S.No.1026 of 2015. These two applications were filed by the first defendant/first respondent under Order XVIII Rule 17 of the Code of Civil Procedure to reopen the evidence of PW1 and to recall PW1 for the purpose of cross examination.

2. The suit had been presented for the relief of declaration that the sale deed executed by the second defendant in favour of the first defendant as null and void and not binding on the plaintiffs/petitioners. In this proceeding, the evidence was completed and the matter was posted for arguments. At that stage, the learned counsel appearing for the first defendant/first respondent felt that there are certain questions which he wanted to confront the plaintiff with and which had not been posed to the plaintiff on the previous occasion. Therefore, he filed the applications for the aforesaid reliefs.

3. This was opposed on the grounds that it is an abuse of process of law and it is belated. It was further stated that the first plaintiff/first petitioner is



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coming all the way from Hyderabad for hearing of the case and the intention of the first defendant was only to harass him by filing such kind of vexatious applications.

4. The learned trial judge, after receipt of a counter and arguments, decided to allow the applications on payment of cost of Rs.1,000/-.

5. Ms.Gayatri would submit that the counsel for the first respondent in fact offered the cost, but since she preferred this revision, it was declined to be received.

6. I have gone through the records and heard the arguments of Ms.Gayatri, Ms.Revathi and Dr.Suriya for the respective parties.

7. Order XVIII Rule 17 is a discretionary order. Unless and until, discretion has been exercised in a capricious or arbitrary manner, it is normally not susceptible to be revised under Article 227 of the Constitution of India. The purpose of filing this application is for cross examination of PW1/the plaintiff. The point remains that it is not a party who cross examines the witness, but it



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depends upon the counsel who carries out the job.

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8. It is plausible that the counsel would have found that he had not asked the necessary questions and therefore, while preparing for final arguments, he would have decided to take out these applications. The judgment has not been pronounced in the case and hence, the situation is still open for correction.

9. Perhaps if such applications had been taken out in the appeal, I might have taken a different view. As the suit is still pending and since the learned trial judge, who had the benefit of seeing the parties before her, had decided to reopen the evidence, I am not inclined to interfere with the order of reopening of evidence.

10. At the same time, I cannot be insensitive to the fact that the plaintiff is travelling all the way from Hyderabad to Chennai for the purpose of case. If he is made to come for a hearing, it would incur a cost of not less than Rs.10,000/-.



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10. Under such circumstances, while the rejecting the vehement prayer of Ms.Gayatri to interfere with the order itself, I am inclined to modify the cost that had been imposed by the trial judge. Accordingly, while sustaining the part of the order permitting the reopening of the evidence, the order imposing the cost of Rs.1,000/- as cost is set aside and the cost is enhanced to Rs.10,000/-. The said cost would have to be paid on or before 19.04.2024. On payment of cost of Rs.10,000/-, the first defendant will be permitted to cross examine PW1 on 22.04.2024. This date is fixed by consent and it is made clear that the first defendant will not be entitled to seek for any adjournment on that date. In case, the party is not cross examined on 22.04.2024, the first defendant will forfeit the right granted under this order.

11. Accordingly, the Civil Revision Petitions are disposed of in the aforesaid terms. No costs. Consequently, connected miscellaneous petition is closed.

04.04.2024

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Note: Issue order copy on 05.04.2024

Index : yes / no



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Neutral Citation : yes / no
Speaking / Non Speaking Order

To

The II Additional City Civil Court in Chennai.



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V.LAKSHMINARAYANAN, J.

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