



WEB COPY



C.R.P.Nos.4113 & 4115 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19..10..2024

Coram

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition Nos.4113 of 2024 & 4115 of 2024
and

C.M.P.Nos.23248 &22587 of 2024

1.A.Velu

2.J.Chandran

3.M.Krishnan

4.E.Vijayakumar

5.M.S.Mani

..... Petitioners

-Versus-

Arulmigu Sri Renukadevi Amman Aalaya

Arakkattalai,

Rep. by its President – Mr.R.Kothandan,

No.63/64, Thiruvallur Salai,

Govindasamy Nagar,

Korukkupet, Chennai 600 021.

..... Respondent

Prayer in C.R.P.No.4113 of 2024: Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order in I.A.No.19 of 2024 in O.S.No.2488 of 2020 dated 08.08.2024 passed by the learned XXI Assistant Judge (FAC), City Civil Court, Chennai, by allowing the Civil Revision Petition.



C.R.P.Nos.4113 & 4115 of 2024

Prayer in C.R.P.No.4115 of 2024: Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order in I.A.No.18 of 2024 in O.S.No.2488 of 2020 dated 08.08.2024 passed by the learned XXI Assistant Judge (FAC), City Civil Court, Chennai, by allowing the Civil Revision Petition.

For Petitioner (s) : Mr.S.Ambigapathi

For Respondent : Mr.M.K.Bhoopathy Rajan

COMMON ORDER

These two civil revision petitions arise against the common order passed by the learned XXI Assistant Judge, City Civil Court, Chennai, in I.A.Nos.18 and 19 of 2024 in I.A.No.17 of 2023 in O.S.No.2488 of 2020. The civil revision petitioners are defendants in the suit.

2. The plaintiff presented O.S.No.2488 of 2020, seeking permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit schedule mentioned property by the plaintiff.

3. The claim of the plaintiff is that the suit property belongs to one Arulmigu Sri Renukadevi Amman Aalaya Arakkattalai. It pleaded that on



C.R.P.Nos.4113 & 4115 of 2024

01.09.2020, the defendants attempted to trespass into the property for the purpose of putting up a construction over the same. The effort to prevent them from doing so by lodging a police complaint did not produce any result, as the police felt that it was a civil dispute and the parties could work out their rights before the civil court.

4. The defendants, on being served with summons, entered appearance and filed a detailed written statement. According to them, the suit schedule mentioned property belonged to the Tamil Nadu Slum Clearance Board (Tamil Nadu Urban Habitat Development Board) is a subject matter of allotment by the said Board.

5. Pending the proceedings, the defendants took out an application in I.A.No.17 of 2024 for a subpoena to the Assistant Commissioner, Hindu Religious and Charitable Endowments (HR & CE), to produce the records relating to the suit schedule mentioned property. The plaintiff had no objection to the said application. Hence, the application stood allowed. Thereafter, the Inspector of HR & CE, who had been authorised by the Assistant Commissioner, HR & CE, appeared before the court and tendered evidence as D.W.5. The said Inspector also produced records relating to the suit property.



C.R.P.Nos.4113 & 4115 of 2024

The defendants also cross-examined D.W.5 in extenso. The evidence was closed. Thereafter, an application was filed by the defendants seeking to reopen and recall D.W.5 i.e., the witness who had been summoned to the court by way of subpoena. The said application was opposed by the plaintiff. The learned trial Judge came to the conclusion that the application is not worth entertaining and thereby dismissed the same. Hence, the revision.

6. Heard Mr.S.Ambigapathi for the civil revision petitioners and Mr.M.K.Bhoopathy Rajan for the respondent in both the civil revision petitions.

7. The narration of the aforesaid facts shows that it is not in dispute that the Assistant Commissioner, HR & CE, Padi, Chennai 600 050, has passed certain orders relating to the suit property. These documents have also been produced by D.W.5 before the trial court.

8. It is the grievance of Mr.S.Ambigapathi that the records that have been produced by D.W.5 are photostat copies, and D.W.5 did not produce the originals before the court.

9. Mr.M.K.Bhoopathy Rajan stoutly opposes the said submission. He



C.R.P.Nos.4113 & 4115 of 2024

points out that D.W.5 had been cross examined for not less than two hours, and at that time, the defendants did not demand from her, the production of the originals. He pleads that the suit property has been correctly dealt with by the HR & CE Department and that this application is an attempt to drag on the proceedings further.

10. Mr.S.Ambigapathi in reply, has produced Ex.A-18 and Exs.X-3 to X-7 and argues that the originals of the said documents had not been produced before the trial court, to enable him to compare the said documents with the aforesaid exhibits and satisfy himself regarding the genuineness of the copies.

11. I have carefully gone through the rival contentions of either party and gone through the records carefully.

12. The suit is of the year 2020 and it has reached the advanced stage of evidence of the defendants. At the fag end of the defendants' side evidence, they have summoned the records from the Assistant Commissioner, HR & CE, Padi, Chennai 600050, for the purpose of marking the proceedings of the said authority with respect to the suit property. The Assistant Commissioner, HR & CE, Padi, Chennai, had deputed an Inspector of HR & CE, to produce the records. However, as pointed out by Mr.S.Ambigapathi, a perusal of the



C.R.P.Nos.4113 & 4115 of 2024

certified copy of Ex.X-3 shows that there is no continuity in the said documents. Perhaps this is because the extracts from which Ex. X-3 has been brought forth before the court are alone necessary for the purpose of the suit. Nonetheless, in order to clothe the said proceedings with the presumption that is given to official records under Section 114 of the Indian Evidence Act, 1872, the originals should have been brought forth before the trial court. This would enable the court to compare with the copies produced. The originals after such comparison can be returned to HR & CE authority concerned. That exercise not having been done, I am inclined to consider this revision.

13. Since the witness is a summoned witness, if I were to merely set aside the order and remit it to the court, then it would be difficult for the trial court to summon D.W.5 again. Therefore, I requested Mr.N.R.R.Arun Natarajan, learned Special Government Pleader (HR & CE) to verify from the Inspector of HR & CE, as to when she would find it convenient to appear before the trial court.

14. Mr.K.Karthikeyan, learned Government Advocate representing Mr.N.R.R.Arun Natarajan, learned Special Government Pleader (HR & CE) states that Inspector HR & CE can present herself before the trial court either



C.R.P.Nos.4113 & 4115 of 2024

on 21.10.2024 or on 23.10.2024.

WEB COPY

15. I feel posting the suit on 21.10.2024 for the cross examination of D.W.5 would put the learned trial Judge into inconvenience as only there is a day intervening between today and Monday. Therefore, D.W.5 shall present herself on 23.10.2024 along with whatever original records are available with respect to the suit schedule mentioned property, especially those marked as Exs.X-1 to X-8.

16. Mr.S.Ambigapathi undertakes that he shall cross examine D.W.5 on 23.10.2024 on the records so produced, and he will not ask for an adjournment.

17. In the light of the above discussions, the civil revision petitions stand allowed in the following terms:

(i) The order passed by the learned XXI Assistant Judge, City Civil Court, Chennai, in I.A.Nos.18 & 19 of 2024 dated 08.08.2024 is set aside.

(ii) The learned Judge is requested to permit D.W.5 to appear on 23.10.2024. The learned Judge shall compare the originals that are produced by D.W.5 along with the certified copies already filed as Exs.X-1 to X-8.



C.R.P.Nos.4113 & 4115 of 2024

(iii) After taking an endorsement from Mr.S.Ambigapathi that he has compared the documents exhibited along with the originals, she shall return the originals to the official concerned.

The learned Judge is requested to act upon a web copy of this order and not to insist upon the production of the certified copy of the order.

Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected CMPs are closed.

Index : yes / no
Neutral Citation : yes / no
kmk

19..10..2024

Note: The Registry to upload the order copy on or before 21.10.2024.

To
1.The XXI Assistant Judge, City Civil Court, Chennai.



WEB COPY



C.R.P.Nos.4113 & 4115 of 2024

V.LAKSHMINARAYANAN.J.,

kmk

C.R.P.Nos.4113 & 4115 of 2024

19..10..2024