



C.R.P.No.3616 of 2019

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 18.06.2024

CORAM:

**THE HONOURABLE MR.JUSTICE BATTU DEVANAND**

C.R.P. Nos. 3616 & 3617 of 2019

and

C.M.P. No. 23664 of 2019

S. Murthy

... Petitioner  
in both CRPs

Vs.

1.Balakrishnan  
2.John Arumairaj

3.The Town Surveyor,  
Taluk Office, Madhavaram,  
Chennai – 60.

... Respondents  
in both CRPs

**Prayer:** Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 27.08.2019 in I.A.No.2 of 2019 and I.A.No.3 of 2019 respectively in O.S.No.198 of 2014 on the file of District Munsif Thiruvottriyur, Tiruvallur.

For Petitioner : Mr. P. Sidharthan  
For Respondents : Mr. S. Suriya, for R3  
Additional Government Pleader (CS)



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C.R.P.No.3616 of 2019



C.R.P.No.3616 of 2019

## **COMMON ORDER**

**WEB COPY** The Civil Revision Petitions have been filed against the order dated 27.08.2019 in I.A.No.2 of 2019 and I.A.No.3 of 2019 respectively in O.S.No.198 of 2014 on the file of District Munsif Thiruvottriyur, Thiruvallur.

2. I.A.No.2 of 2019 is filed under Section 151 of CPC to reopen the plaintiff side evidence and I.A.No.3 of 2019 is filed under Order XVIII Rule 17 of CPC to recall P.W.1 in the above case.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the third respondent. There is no representation on behalf of respondents 1 and 2 inspite of service of notice.

4. The petitioner is the plaintiff and the respondents are defendants in the suit in O.S.No.198 of 2014 filed for the relief of permanent injunction against the defendants, for damages, mandatory injunction and for declaration of decree passed in O.S.No.279 of 1997 as null and void.



C.R.P.No.3616 of 2019

WEB COPY

5. Learned counsel for the petitioner submits that the petitioner has sought for the approved layout in respect of Madhavaram Village NI A YEN 991/183, 993/3, 994/2 and Jampulingam Village NI A YEN 3 which petitioner having the same since purchase of the schedule property and the same was also furnished by the second respondent, but due to inadvertence, the above layout had not been filed as documents before the trial Court in suit proceedings. Hence, the petitioner had filed an application to receive the same as additional documents and the same was allowed by the trial Court. Accordingly, the petitioner had applied for the certified copy of the said approved layout from the concerned office and received the reply stating that, as it is an old record they are not in a position to retrieve the same and if retrieved, the copy will be marked to the petitioner. Under these circumstances, the petitioner intends to mark the same and also filed a letter along with the memo. But the trial Court refused to mark the same citing xerox copy and returned the documents without assigning any reason for not marking the same and subsequently closed the evidence of the plaintiff.



C.R.P.No.3616 of 2019

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6. Learned counsel further contends that in the absence of primary documents, the secondary documents can be marked. In order to prove that the respondent has no case, the petitioner evidence and the documents has to be taken on record. Under these circumstances, it is just and necessary to recall the petitioner's side evidence for the purpose of marking the said documents. The learned counsel submits that the trial Court without considering the fact that if the petitioner evidence is not reopen and recall, the petitioner will be put to irreparable loss and injury, erroneously dismissed the Interlocutory applications filed by the petitioner to reopen the plaintiff side evidence and to recall P.W.1 in the suit. The learned counsel submits that the trial Court dismissed the Interlocutory Applications, holding that the documents sought to be marked are secondary documents and the same is not supported by any letter of communication from the third respondent, though the documents are filed along with the petitioner letter under RTI and reply by third respondent.



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7. Learned counsel further contends that the trial Court erred in dismissing the Interlocutory Applications without going into the communication dated 12.11.2018 and 16.11.2018 which is crystal clear and he did not rule out the non-availability of such layout and further sought the layout from the office of Chengalpet. The learned counsel further submits that in the absence of the primary documents, the secondary documents can be relied upon and the Hon'ble Apex Court in its various decisions has ruled in favour of the secondary documents, it is a situation and permitted the same be marked as exhibits. Accordingly, the learned counsel submits that the common order passed by this Court in dismissing the Interlocutory Applications filed by the petitioner to reopen the plaintiff side evidence and to recall P.W.1 is unsustainable under law and sought to allow the Civil Revision Petitions.

8. Though there is no representation on behalf of first respondent, who is the real contesting respondent in the CRP, the learned counsel appearing for the third respondent vehemently opposed the relief sought by the petitioner in the CRP.



C.R.P.No.3616 of 2019

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9. Though the learned counsel for the respondent made several contentions, it appears that in the trial Court when these two Interlocutory Applications were taken up for hearing, no counter has been filed on behalf of the third respondent and no objections are raised on behalf of the third respondent. Only the first respondent filed counter in Interlocutory Application and advanced their arguments.

10. It appears, having heard both sides, the trial Court came to an opinion that the petitioner has not stated the reasons for not filing the certified copy of the above layout. Admittedly, the trial Court accepted that in the absence of primary evidence, secondary evidence could be marked. But in the present case, as the petitioner has not taken the reason for not having the primary evidence nor the certified copy of the said layout, the trial Court came to an opinion that no merits found in those petitions and accordingly, dismissed the same.



C.R.P.No.3616 of 2019

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11. But infact, in the affidavit filed by the petitioner along with Interlocutory Applications at paragraphs 3 to 6, he clearly sated the reasons for not having the primary evidence and for not filing the certified copies of the layout. The trial Court without considering the reasons stated by the petitioner in proper perspective dismissed the Interlocutory Applications filed by the petitioner erroneously. Moreover, the suit is of the year 2014 and still it is pending. It is stated that now the suit is at the stage of recording of defendants evidence.

12. Considering all these aspects, in our considered view, no prejudice will be caused to any party by permitting the trial Court to reopen the plaintiff side evidence and to recall P.W.1.

13. Accordingly, in the interest of justice, the Civil Revision Petitions are allowed and the common order dated 27.08.2019 in I.A.N.2 of 2019 and I.A.No.3 of 2019 in O.S.No.198 of 2014 on the file of District Munsif Thiruvottriyur, Thiruvallur is set aside.



C.R.P.No.3616 of 2019

**WEB COPY** 14. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

**18.06.2024**

Index : Yes / No

Neutral Citation : Yes / No

AT

**Note: Issue order copy within three days**



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C.R.P.No.3616 of 2019

**BATTU DEVANAND, J.**

AT

To

- 1.The District Munsif Thiruvottriyur, Tiruvallur.
- 2.The Town Surveyor,  
Taluk Office, Madhavaram,  
Chennai - 60.

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