



CRP No.5014 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.5014 of 2023 and
CMP No.29233 of 2023

V.Shanmugam

... Petitioner

Vs.

1. Ravi @ Ravikumar
2. Raja @ Venkatraj
3. Muthappa Chetty
4. Ramachandran
5. Nagarajan
...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed in I.A.No.9/2023 in O.S.No.410/2004, dated 19.10.2023 by the District Munsif, Sankari.

For Petitioner

: Mr.L. Mouli



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ORDER

This Civil Revision Petition has been filed to set aside the order passed in I.A.No.9/2023 in O.S.No.410/2004, dated 19.10.2023 by the learned District Munsif, Sankari.

2. The petitioner herein, who is the plaintiff in O.S.No.410/2004, has filed the above suit for permanent injunction restraining the respondents/defendants from interfering with his peaceful possession and enjoyment of the suit property and also in any way obstructing him from putting up the fence for the suit property. The 5th respondent herein/5th defendant has filed a petition before the Trial Court seeking permission to file additional proof affidavit for marking documents. The above petition was allowed by the Trial Court, against which, this civil revision petition has been filed.

3. Heard the learned counsel for the petitioners and I have perused the materials on record.



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4. It is the contention of the petitioner/plaintiff that, in the suit, PW1's examination was over and on the side of the defendants, DW1 was examined in chief, and also he was partly cross examined. In such circumstances, the respondents/defendants filed an application, seeking permission to file additional Proof affidavit for marking some documents, which have not been mentioned in the earlier proof affidavit. When the DW1 has been partly cross examined, he cannot be permitted to file additional proof affidavit, without cross examining him in full, by the other side. However, without considering the above procedure, the Trial Court has allowed the application and hence, the impugned order passed by the learned Judge is liable to be set aside.

5. On perusal, it appears that the petitioner has filed the suit for permanent injunction with regard to the suit property on the ground that he had purchased the property by way of sale deed. The Court has inherent powers to do justice and every procedure is permitted to the court for doing justice, unless expressly prohibited. But, in this case, before completion of



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cross examination of DW1, the application to receive additional proof affidavit was allowed, which is a procedural irregularity. However, the Court has inherent powers to rectify the procedural irregularities. Therefore, for doing justice, the respondents/defendants may be permitted to file additional affidavit along with the documents, which were omitted to be marked, during the chief examination of DW1. As such, I find no illegality in allowing the application to file additional proof affidavit for marking some documents, by the respondents/defendant by the Trial Court. However, the Trial Court ought to have allowed the application, after completion of cross examination of DW1, not pending cross examination. Any how, since the petition was allowed, pending cross examination of DW1, this Court is inclined to dismiss the civil revision petition with a direction to the Trial Court.

6. Accordingly, the Trial Court is directed to stop the further cross examination of DW1 and let the respondents/defendants to file additional proof affidavit along with the documents and after that, allow petitioner/



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plaintiff to further cross examine the DW1. Further, the Trial Court is directed to give sufficient opportunity to the petitioner/plaintiff to peruse the additional documents filed by the respondents/defendants and to cross examine the DW1.

7. With the above direction, this Civil Revision Petition is dismissed and the impugned order passed by the Trial Court is confirmed. Consequently, connected miscellaneous petition is closed. No costs.

11.01.2024

Index: Yes/No
Internet: Yes/No
mst

To

The District Munsif, Sankari.



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V.SIVAGNANAM, J.,

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