



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.03.2015

CORAM:

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

C.R.P. (MD) .No.246 of 2015 (PD)

and

M.P. (MD) .No.1 of 2015

Rajeswaran

...Revision Petitioner/REspondent/Plaintiff

vs.

1.S.Arumugam

2.K.Ganapathy Ammal

...Respondents/Petitioners/Defendants 1 & 2

PRAYER: This Civil Revision Petition filed under Article 227 of the Constitution of India, to allow the civil revision petition by setting aside the fair and decreetal order passed in I.A.No.790 of 2014 in O.S.No.19 of 2011 dated 20.11.2014 on the file of the District Munsif Court, Ambasamudram.

For Petitioner : Mr.S.Meenakshi Sundaram
For R1 and R2 : Mr.V.George Raja

O R D E R

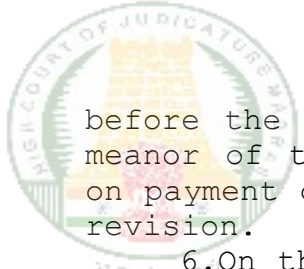
The plaintiff in O.S.No.19 of 2011 on the file of the District Munsif Court, Ambasamudram has filed the revision against the order of allowing application in I.A.No.790 of 2014, which was filed for setting aside the evidence of D.W.1.

2.The defendants on the date itself for their cross-examination i.e., on 10.09.2014 were not present in the Court. Therefore, their evidence was closed by the Court. Aggrieved by which, an application was filed for restoring the evidence of D.W.1, which was opposed by the plaintiff.

3.The suit is filed for bare injunction restraining the defendants from interfering with the peaceful possession of the plaintiff. The trial had commenced and the evidence of the plaintiff's side was over. Thereafter, it was posted for defendants' side witness. The first defendant had examined himself by filing a proof affidavit on 18.08.2014 and it was adjourned for D.W.1's cross-examination on 10.09.2014. On that day, the first defendant did not appear before the Court. Hence, the evidence was struck off.

4.The defendants stated that his counsel had not informed him of the fixed date of hearing. Hence, he had to change the counsel and go before the Court.

5.From the perusal of the 'B' diary, it can be seen that D.W.1 had been regularly attending the Court and submitting himself for cross-examination and the case was adjourned only at the instance of the plaintiff's counsel for cross-examination. The subsequent date was not known to him through the counsel, therefore, they could not be present



before the Court. The trial Court which had the occasion to see the demeanor of the parties and considered the facts, allowed the application on payment of Rs.250/-. Against which, the plaintiff has come up with the revision.

6. On the part of D.W.1 the only reasons stated in the trial Court is that, the Court has not found any negligence on the part of the defendants and allowed the application and there is no in different attitude of the part of the defendant. Hence, in the interest of justice, the application was allowed and there is no merit to interfere with the same in the civil revision petition and the same deserves dismissal.

In the result, the civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

The District Munsif, Ambasamudram.

+1cc to Mr.A.Arumugam, Advocate in Sr.15918

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