

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.1574 of 2016
and
C.M.P.No.8449 of 2016

1.Pongianna Gounder
S/o.Late Perumal Gounder

2.P.Soundaram
W/o.Pongiyanna Gounder

... Petitioners

vs

1.State of Tamil Nadu
represented by
District Collector,
Erode District.

2.The Assistant Commissioner,
Hindu Religious & Charitable Endowment Board,
Perode, Erode District.

3.The Inspector,
Shri Karichi Kumarasamy Temple,
Hindu Religious & Charitable Endowment Board,
Perode, Erode District.

4.Shri Karichi Kumarasamy Temple,
Perode by its Trustee
S.Ramasamy (died),
Perode, Erode District.

5.Nataraj @ Thirumalaisamy,
S/o.Late Ramasamy

... Respondents

Civil Revision Petition filed under Section 227 of the Constitution of India against the order of learned I Additional District Munsif, Erode, passed in I.A.No.64 of 2016 in O.S.No.188 of 2013 on 03.03.2016.

For Petitioners : Mr.N.Manokaran

ORDER

This revision challenges the order of learned I Additional District Munsif, Erode, passed in I.A.No.64 of 2016 in O.S.No.188 of 2013 on 03.03.2016.

2. O.S.No.188 of 2013 was an action moved by petitioners/plaintiffs seeking permanent and mandatory injunction. On the death of the fourth defendant, the subsequent trustee, viz., the fifth defendant, has been brought on record. He has been examined as DW-1 on 08.01.2016 and thereafter, as early as on 12.01.2016, I.A.No.64 of 2016 has been moved informing the need for his further cross-examination. Though the fifth respondent has made an endorsement on the petition to the effect that the same may be allowed on costs, the Court below has informed that though a lengthy cross-examination, running into three pages, of DW-1 has been conducted, no reasons have been informed in the affidavit in support of the application to the effect that 'the question of fact to be cross examined is not find out by a prudent man on 08.1.16'.

3. Making a presumption that further cross-examination is sought only to fill up the lacuna, a decision of the Supreme Court has been relied on towards dismissal of the petition. When an interim application seeking recall of a witness has been made at an early stage and the same has not been objected to by the opposite party, the Court should avoid taking a hyper technical approach and acting on conjectures. Taking note of the position that I.A.No.64 of 2016 in O.S.No.188 of 2013 has not been objected to by the opposite party, this Court does not consider it necessary to order notice to respondents.

The Civil Revision Petition shall stand allowed. As a consequence, I.A.No.64 of 2016 in O.S.No.188 of 2013 seeking recall of DW-1 and marking of documents, shall stand allowed subject to payment of costs in a sum of Rs.500/- to the respondents within a period of two weeks from the date of receipt of this order. Consequently, connected miscellaneous petition is closed.

10.06.2016

Index:yes/no
Internet:yes
gm

To

The I Additional District Munsif,
Erode.

C.T.SELVAM, J

gm

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