

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(PD).No.2909 of 2016
and C.M.P.No.14869 of 2016

1.Thangavel

2.Vijay

3.Indirani

... Petitioners

Vs.

1.M.Arun

2.M.Santhi

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 27.04.2016 made in I.A.No.274 of 2016 in I.A.No.569 of 2014 in O.S.No.228 of 2014 on the file of the III Additional District Judge, Salem.

For Petitioners : Mr.C.Prabakaran

ORDER

Challenging the fair and final order passed in I.A.No.274 of 2016 in I.A.No.569 of 2014 in O.S.No.228 of 2014 on the file of the III Additional District Judge, Salem, the defendants have filed the above Civil Revision Petition.

2.The plaintiffs filed the suit in O.S.No.228 of 2014 for permanent

injunction. The defendants filed their written statement and are contesting the suit.

3. Before the trial Court, the plaintiffs filed an application in I.A.No.569 of 2014 seeking for temporary injunction. The defendants filed their counter and are contesting the injunction application. Subsequently, the defendants filed an application in I.A.No.274 of 2016 under Order 19 Rules 1 & 2 of the Civil Procedure Code to cross examine one of the petitioner therein in I.A.No.569 of 2014. The application filed by the defendants was contested by the plaintiffs. The trial Court, taking into consideration the case of both parties, dismissed the application finding that the affidavit filed in support of the application in I.A.No.569 of 2014 cannot be construed as a proof affidavit and therefore, the defendants cannot seek for cross examination of the deponent of the affidavit. The plaintiffs have filed the affidavit in support of the application in I.A.No.569 of 2014 not in lieu of chief examination. If the affidavit was filed in lieu of chief examination, the defendants are entitled to cross examine the plaintiffs. In these circumstances, the dismissal of the application by the trial Court is just and proper.

4. In these circumstances, I do not find any error or irregularity in the order passed by the trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. However, it is open to the defendants to take appropriate steps in accordance with law for summoning any witness. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

19.09.2016

To

The III Additional District Judge,
Salem.

M.DURAISWAMY,J.
va

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