

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.10.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.3173 of 2016 and

CMP.No.16106 of 2016

1. Karpagam

2. E.Neelakandan

...Petitioners

versus

1. Ekambaram

2. Dhanalakshmi

3. Varalakshmi

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order by dismissing the I.A.No.8296 of 2016 in O.S.No.1179 of 2009 on the file of the XV Assistant Judge, City Civil Court at Chennai.

For Petitioners : Mr.R.Karunagaran

For Respondents : Mr.K.Sankaran

ORDER

The petitioners have filed an application before the trial court to recall D.W.1 for further cross-examination. The learned Trial Judge having found that several opportunities were given to the petitioners to examine the witness on the side of the respondents and that they failed to avail the chance, dismissed the application. The said order is under challenge in this Civil Revision Petition.

2. Heard the Learned counsel for the petitioners and the counsel for the respondents on caveat.

3. The order passed by the learned trial Judge indicates that D.W.1 was examined in chief on 23.07.2015. The petitioners ultimately cross examined D.W.1 on 17.08.2015. The evidence of D.W.1 was closed on 08.09.2015. Thereafter, D.W.2 filed his proof affidavit on 05.10.2015. The petitioners for the reasons best known filed an application in I.A.No.14999 of 2015 to recall D.W.1 for further cross-examination. The application was filed on 12.10.2015. Before filing the application, the petitioners have not cross-examined D.W.2. The trial court allowed the application I.A.No.14999 of 2015 on 26.11.2015 with an opportunity to the petitioners to cross-examine D.W.1 once again. Since the petitioners failed to cross-examine the witness, the evidence was closed on 04.01.2016.

4. The petitioners thereafter filed I.A.No.1431 of 2016 to recall D.W.1 for cross-examination. The said application was allowed on 01.03.2016. However, the petitioners failed to cross-examine the witness and the evidence was closed on 15.06.2016.

5. The petitioners have filed I.A.No.8296 of 2016, for further cross examination of D.W.1. According to the trial court, sufficient opportunity was given to the petitioners to cross-examine D.W.1. The petitioners have not availed the opportunity. The trial court was perfectly correct in dismissing the application for the reasons stated in the impugned order.

6. The learned counsel for the respondents incidentally submitted that the matter is posted for Judgment on 17.10.2016.

7. The petitioners were given sufficient opportunity by the trial court. There is no question of recalling D.W.1 for further cross-examination at a later point of time. I do not find any error or illegality in the order passed by trial court warranting interference by exercising the revisional jurisdiction under Article 227 of the Constitution.

8. In the upshot, I dismiss the Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is closed.

07.10.2016

Index:Yes/No
Internet: yes / No

ssd

K.K.SASIDHARAN, J.

ssd

To

The XV Assistant Judge,
City Civil Court,
Chennai.

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