

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

**C.R.P (PD) Nos.644 and 645 of 2016
&
C.M.P.Nos.3328 and 3329 of 2016**

1.Tmt.Yogambal
2.Miss.Hemalatha

... Petitioners
in both the petitions

vs.

1.P.Damodaran
2.P.Sampathkumar @ P.Ramanujam
3.P.Saravanabhavan

... Respondents
in both the petitions

Prayer in C.R.P (PD) No.644 of 2016: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 13.10.2015 in I.A.No.15017 of 2015 in O.S.No.3912 of 2000 on the file of the learned VII Assistant City Civil Court, Judge.

Prayer in C.R.P (PD) No.645 of 2016: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 13.10.2015 in I.A.No.15018 of 2015 in O.S.No.3912 of 2000 on the file of the learned VII Assistant City Civil Court, Judge.

For Petitioner : Mr.V.Venkatesan

for Mr.V.Raghupathi

ORDER

The defendants 1 and 2 in O.S.No.3912 of 2000 are the petitioners in the Civil Revision Petitions. After framing of issues, the trial commenced and PW1 was examined. Since PW1 was not cross-examined when offered to be cross-examined, the case was adjourned for cross-examination of PW1 for a number of times at the instance of the petitioners herein/defendants. Even on the adjourned date, the petitioners were not prepared to cross-examine PW1. Hence, the trial Court chose to close the evidence of PW1 without PW1 being cross-examined.

2. Subsequently, the petitioners filed applications in I.A.No.15017 of 2015 to re-open the case for further evidence and I.A.No.15018 of 2015 to re-call PW1 for cross-examination. Both the applications were allowed on 13.10.2015 directing payment of a cost of Rs.750/- to the plaintiffs in each one of the applications with a further condition that PW1 should be cross-examined on 13.10.2015 without fail. Though the petitioners paid the cost, they did not cross-examine PW1 on 13.10.2015. Hence, the learned trial Judge chose to dismiss both the petitions. As against the orders passed on

13.10.2015 in the said applications, the present Civil Revision Petitions have been filed.

3. The submissions made by Mr.V.Venkatesan, learned counsel for the petitioners are heard.

4. It is the contention of the learned counsel for the petitioners that since an amendment application was filed by the petitioners herein for amending the written statement in I.A.No.10497 of 2013 and the same was dismissed by the trial Court on 04.07.2014, they were not prepared to cross-examine PW1 which resulted in the closure of the evidence of PW1 and that thereafter, since a Civil Revision Petition was filed in C.R.P.No.458 of 2015 before this Court, the petitioners were not prepared to cross-examine PW1. It is his further submission that though the said Civil Revision Petition came to be dismissed on 05.06.2015, a review application was filed in Rev.S.R.No.87640 of 2015 and that in view of the same, the petitioners were not prepared to cross-examine PW1.

5. The above said submissions will show that showing the pendency of the application for amendment of the written statement

and after the dismissal of the said application, showing the pendency of the Civil Revision Petition and after the dismissal of the Civil Revision Petition, showing the SR Number in the review petition, which has not been numbered so far, the petitioners wanted to stall the trial and only in such an attempt, they failed to cross-examine PW1 when he was offered to be cross-examined. After suffering an order of closure of the evidence of PW1 without cross-examination, the petitioners filed applications for re-opening and re-calling PW1. The trial Court also gave them a chance by allowing those applications on condition of payment of cost and also on a further condition that they should be ready to cross-examine PW1 on 13.10.2015. The petitioners showed their determination not to proceed with the trial by cross-examining PW1 on 13.10.2015 and the same was the reason why the applications came to be dismissed by the trial Court by the orders impugned in the present Civil Revision Petitions. This Court does not find any defect or infirmity or illegality in the orders passed by the trial Court. The very adamancy on the part of the petitioners could not have been countered in any other manner as the petitioners are bent upon dragging on the case citing one reason or other. The decision taken by the trial Court cannot be successfully assailed by preferring the present Civil Revision Petitions. There is no merit in the

revisions and both the revisions are liable to be dismissed at the threshold.

Accordingly, both the Civil Revision Petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

01.03.2016

Index: Yes/No
Internet: yes/No
gpa

To

VII Assistant City Civil Court
Chennai

P.R.SHIVAKUMAR.J.,

gpa

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