



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.12.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) No.2463 of 2015 (NPD)

Dr.Delphin, W/o.T.Mohan Babu

.. Petitioner

Vs.

1.M.Abraham

2.Abrahamsamuel, S/o.Jebaraj Muthaiya

3.Minor Getzie, D/o.Abraham Samuel

4.Minor Sarah Sheela, D/o.Abraham Samuel

(Respondents 3 and 4 are represented by  
their father and natural guardian 2<sup>nd</sup> respondent)

5.Dr.C.Kumaran

6.Dr.R.Thenmozhi

7.Dr.R.Muthukumaran

8.The Dean,

Government Raja Mirasudar Hospital,  
Government Raja Mirasudar Hospital Campus,  
Thanjavur Town and Munsif.

9.The Dean,

Thanjavur Medical College Hospital,  
Thanjavur Medical College Campus,  
Thanjavur Town and Munsif.

10.The State of Tamil Nadu,

Rep. by the District Collector,  
Thanjavur,  
District Collector Office, Court Road,  
Thanjavur Town and Munsif

.. Respondents

Civil Revision Petition filed under Article 227 of the  
Constitution of India, against the order dated 19.12.2014, passed  
in I.A.No.440 of 2014 in O.S.No.267 of 2011, by the learned  
Principal Subordinate Judge, Thanjavur.



For Petitioner : Dr.B.Cheran  
For R1 : Mr.M.Karunanithi  
For R8 : Mr.G.Muthukannan  
For 2 to 7, 9 & 10 : No Appearance

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ORDER

This Civil Revision Petition has been filed against the order dated 19.12.2014, passed in I.A.No.440 of 2014 in O.S.No.267 of 2011, by the learned Principal Subordinate Judge, Thanjavur.

2. Facts of the case:-

(i) The petitioner is the second defendant and the respondents 1 to 4 are the plaintiffs and the respondents 5 to 10 are the defendants 1 and 3 to 7 in the suit in O.S.No.267 of 2011 on the file of the Principal Subordinate Court, Thanjavur.

(ii) The respondents 1 to 4 filed the suit claiming a sum of Rs.5,00,000/- as compensation for medical negligence on the part of the petitioner and the respondents 5 to 10. The evidence on behalf of the respondents 1 to 4/plaintiffs and the fifth respondent/first defendant was completed. The petitioner also gave evidence as D.W.2 and she was cross-examined. After completion of evidence, she filed I.A.No.440 of 2014 for recalling her evidence and also filed I.A.No.441 of 2014 to re-examine her as per Order 18 Rule 17 and Section 151 C.P.C.

(iii) According to the petitioner, certain medical terms are to be explained and at the conclusion of her cross-examination itself, her counsel represented that re-examination is necessary. Therefore, she prayed for allowing both the applications.

(iv) The respondents 1 to 4 filed counter affidavit and opposed the said application on the ground that the petitioner is trying to withdraw certain admission made by her in her cross-examination.

(v) The learned Principal Subordinate Judge, Thanjavur, considering the averments made in the affidavit and the counter affidavit and the materials on record and the arguments of the learned counsel for the parties, dismissed both the applications holding that there is a possibility of petitioner withdrawing the admission in the cross-examination, if she is permitted to the re-examination. The learned Principal Subordinate Judge has also held that the respondents 1 to 4 have examined the petitioner/Doctor as D.W.2 and the fifth respondent, who is a Doctor, gave evidence as D.W.1 and the respondents 6 and 7 are also Doctors, who will give evidence explaining the medical term.

3. Against the said order dated 19.12.2014, the petitioner has come out with the present Civil Revision Petition.

<https://hcservices.courts.gov.in/hcservices/> The learned counsel for the petitioner contended that the learned Principal Subordinate Judge dismissed both the petitions on assumption that the petitioner will withdraw the admission made



by her in the cross-examination. The petitioner has stated that she has to explain certain medical terms, which she was not permitted to raise at the time of her cross-examination and therefore, prayed for allowing the Civil Revision Petition.

5. The learned counsel for the respondents 1 to 4 submitted that I.A.No.440 of 2014 filed by the petitioner is not maintainable in law and it was filed with a view to drag on the proceedings and already two Doctors were examined to give evidence with regard to various allegations made by the respondents 1 to 4. Therefore, the contention of the learned counsel for the petitioner that the petitioner must be given an opportunity to explain certain medical terms, is devoid of merits. The learned Principal Subordinate Judge has properly exercised his jurisdiction and considered all the materials in proper perspective and prayed for dismissal of the application.

6. In support of his submissions, the learned counsel for the first respondent relied on the judgment reported in 2009 (4) SCC 410 [Vadiraj Naggappa Vernekar (Dead) Through LRs. Vs. Sharadchandra Prabhakar Gogate], wherein at paragraph 25, it has been held as follows:

"25. In our view, though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable the Court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined."

7. The petitioner filed two applications in I.A.Nos.440 and 441 of 2014 for recalling her evidence and for permission to re-examine herself on the ground that she has to explain certain medical terms. The learned Principal Subordinate Judge dismissed the application on the ground that the petitioner will withdraw the admission made by her in the cross-examination. There is no material on record to come to the said conclusion. Even if the petitioner is deposes in re-examination contrary to the evidence what she has stated in cross-examination, the same will be considered at the time of conclusion of trial while appreciating her evidence in coming to the conclusion to decide the suit on merits. The learned Principal Subordinate Judge has not properly exercised his jurisdiction and failed to consider the averments made by the petitioner in the affidavit filed in support of the application filed by her in proper perspective. Therefore, the order dated 19.12.2014, passed in I.A.No.440 of 2014, by the learned Principal Subordinate Judge, Thanjavur, is liable to be set aside and accordingly, the same is set aside.



8. In the result, the Civil Revision Petition is allowed. No costs.

Sd/-  
Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge,  
Thanjavur.

+1cc to Mr.A.Hajamohideen,Advocate Sr.No.82929

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22.12.2016

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