

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P. (PD) No.4375 of 2017
and
C.M.P.No.20798 of 2017

1.Tmt.Jothiammal
2.Tmt. Swapna Sundari
3.Mr.Alagesan
4.Mr.Dongea
5.Mr.Mohan Kumaramangalam

.. Petitioners

Vs

1.Mr.K.Anjan
2.Mr.A.Kalyanasundaram

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the dismissal order and decretal order passed in I.A.No.11845 of 2017 in O.S.No.651 of 2015 dated 27.10.2017 by the XII Assistant City Civil Court, Chennai.

For Petitioners : Mr.V.R.Appaswamee

For Respondents : Mr.P.Vasanthakumar Visweswara

ORDER

This revision arises against the dismissal order and decretal order passed in I.A.No.11845 of 2017 in O.S.No.651 of 2015 dated 27.10.2017 by the XII Assistant City Civil Court, Chennai.

2. The issue involved in the present revision petition is whether the plaintiffs can compel to summon the first defendant to give evidence before the court, as a court witness. The learned counsel for the petitioners would submit that the defendants have marked 4 documents through PW-1. Thereafter, the defendants have not let in any oral evidence. Therefore, the petitioner has filed the present revision for the aforesaid prayer.

3. Following the earlier decisions, in the case of ***B. Rajeswari & anr. vs. B. Vinayagam & 2 Ors., reported in 2010 (1) MWN (Civil) 403***, this Court has considered and allowed the application to summon the 3rd defendant, to depose in favour of the plaintiff. Further, in the other decision of this Court in the case of ***Suresh vs. Uttam reported in 2012 (6) Mh.L.J 311***, wherein it is held as follows in paragraph 6 :-

“ ... However, it is made clear that it will be open for the trial court to draw adverse inference, if any, since the defendant No.4 has chosen not to enter into the witness box, though written statement is filed by him.”

This Court has considered similar issues in the case of ***Ravichandran vs. Sundara Kumar & Ors.***, and the same is reported in ***2016 SCC Online Mad 9763***, wherein this Court has reiterated the similar view taken in ***V.K. Periyasamy alias Perianna Gunder v. Rajan reported in (2001) 2 MLJ 235***, relying upon the earlier judgements, it is held that if a party does not appear in the witness box it would be open to the trial court to draw an inference against him. If a party fails to appear in the witness box, it should normally not be open to his opponent to compel his presence by issue of a witness summons. Therefore, adverse inference can be drawn, if he has not entered the witness box and not examined himself as a witness, otherwise it cannot be gone against the parties concerned.

4. In the light of the above decisions of this Court, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

05.12.2017

Index : Yes/ No

Speaking order/ Non speaking order

avr

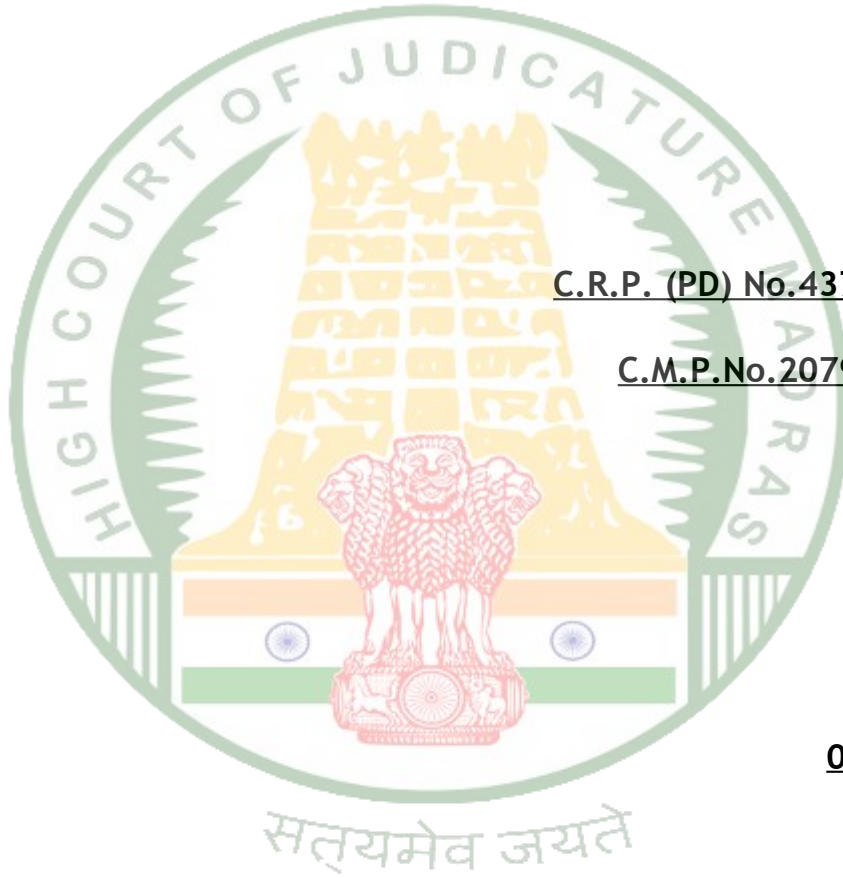
To
XII Assistant City Civil Court,
Chennai.



WEB COPY

D. KRISHNAKUMAR J.,

avr



C.R.P. (PD) No.4375 of 2017
and
C.M.P.No.20798 of 2017

05.12.2017

WEB COPY