

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

CRP.PD.No.4575 of 2017

and

C.M.P.No.21582 of 2017

1. S.Senthamilselvi
2. Chinnasamy
3. Chandra Mahendran

..Petitioners

Vs.

1.C.Velayutham
2.C.Murugesan

..Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 11.10.2017 in I.A. No.477 of 2017 in O.S. No.77 of 2010, on the file of the District Munsif Court, Paramathi.

For Petitioners : Mr.R.Subramanian

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ORDER

The Civil Revision Petition is filed to set aside the fair and decretal order dated 11.10.2017 in I.A. No.477 of 2017 in O.S. No.77 of 2010, on the file of the District Munsif Court, Paramathi.

2.The learned counsel for the petitioners would submit that the respondents herein have filed the suit in O.S. No.77 of 2010 before District Munsif for declaration and consequential permanent injunction. The said suit was posted for trial and the second plaintiff was examined as PW.1. The revision petitioners have filed an Application in I.A. No.477 of 2017 under Order 10 Rule 3 of the Code of Civil Procedure seeking permission to cross examine 1st plaintiff as P.W.2.

3. The learned counsel for the petitioners would submit that the court below has not properly appreciated the case of the petitioners and erroneously dismissed the said application. Therefore, the petitioners have filed the present Civil Revision Petition before this Court.

4. Heard the learned counsel for the petitioners and perused the materials available on record.

5. At this juncture, it is useful to extract the decisions of this Court in the case of *D.Babu Vs. K.A.Dinachandran and Others* reported in 2013 (1) CTC 881 and in the case of *V.L.Ramanathan Vs. Salem Nagarathar Sangam* reported in 2014 (4) LW 174, wherein it has been held that:

"the plaintiff cannot summon a contesting defendant and compel him to give evidence on his side. Even if the second defendant's evidence is relevant and necessary, he being a defendant contesting along with his wife namely the first defendant, the plaintiff may at the best demand that adverse inference be drawn against the defendants".

6. In the light of the judgment cited supra, the revision petitioners/defendants cannot compel the respondents/plaintiffs to give evidence. Therefore, there is no error or illegality in the order passed by the trial court and the same is confirmed. However, It is open to the Court below to invoke the said provision under Order 10 Rule 2 (a) (b) of the Code of Civil Procedure, if necessary at the time of the trial.

7. Thus, the Civil Revision Petition fails and the same is dismissed. Consequently, the connected miscellaneous petition is closed.

No costs.

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Speaking/Non-speaking order

Index : Yes/No

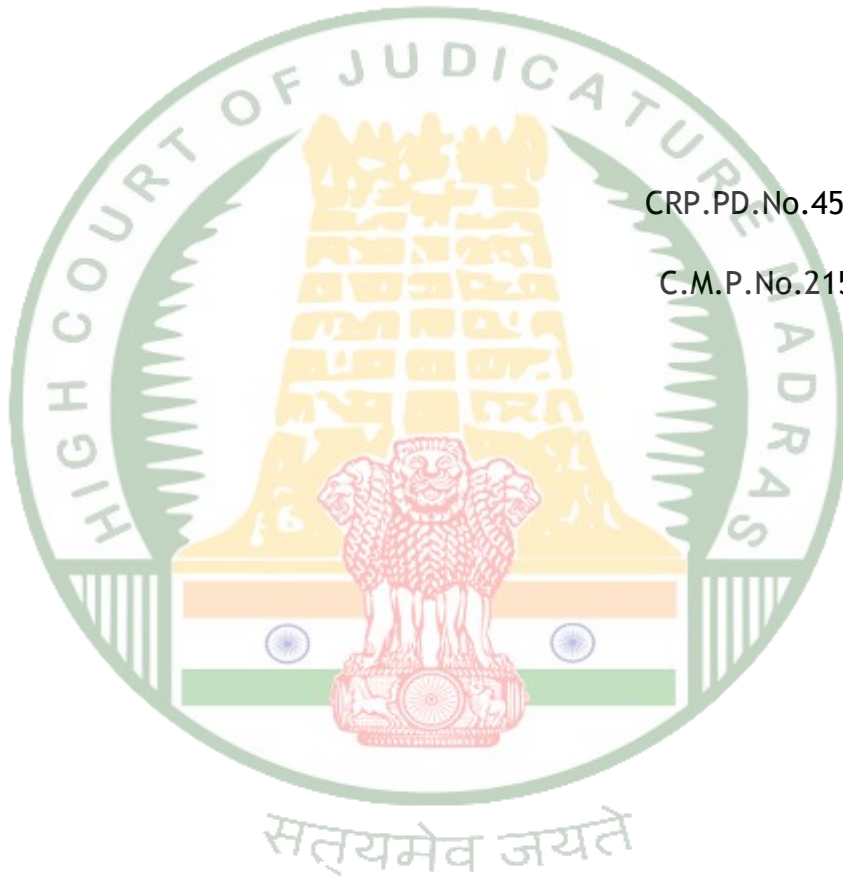
Internet : Yes/No

RKP

D. KRISHNAKUMAR.J.,

RKP

To
The District Munsif,
Paramathi.



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