

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2017

CORAM

THE HON'BLE MS. JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.538 and 539 of 2015
and M.P.Nos.1,1 of 2015

1.Rangan
2.Mani

... Petitioners
in both CRPs.

Vs.

1.Muthammal
Pargunan (died)
2.R.Murugan
3.A.Murugan
4.M.Boominathan

5.The District Collector
Thiruvannamalai District.

6.The Tahsildar
Taluk Office
Thiruvannamalai.

... Respondents
in both CRPs.

Prayer : Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal order dated 26.11.2014 made in I.A.Nos.857 and 858 of 2014 in O.S.No.415 of 2008 on the file of the Principal District Munsif Court, Thiruvannamalai.

For Petitioners : Mr.G.Rajan

For R1 to R4 : Mr.K.Goviganesan

For R5 and R6 : No appearance

COMMON ORDER

The Civil Revision Petitions are filed against the fair and decretal order dated 26.11.2014 made in I.A.Nos.857 and 858 of 2014 in O.S.No.415 of 2008 on the file of the Principal District Munsif Court, Thiruvannamalai.

2. In both the Civil Revision Petitions, the parties and the issues are one and the same and therefore, they are disposed of by this common order.

3. The petitioners are the plaintiffs and respondents are the defendants in O.S.No.415 of 2008 on the file of the District Munsif Court, Thiruvannamalai. The petitioners filed said suit for declaration and permanent injunction. The respondents filed written statement and additional written statement and are contesting the suit. The trial commenced and the parties let in evidence and closed their side. When the suit was posted for arguments, the petitioners filed two applications in I.A.Nos.857 and 858 of 2014 to reopen the case and recall D.W.2 for further cross-examination.

4. According to the petitioners, when their advocate preparing for arguments, they found that certain important questions were omitted to put to D.W.2. Therefore, they filed the present applications.

5. The third respondent filed counter affidavit and submitted that on earlier occasion, after completion of evidence, the petitioners filed an application for recalling P.W.1 and application for marking the additional documents. Both the applications were allowed and the petitioners marked documents. They also filed two other applications to mark the documents. The petitioners are in the habit of filing application after application. When the suit is posted for arguments, the petitioners have come out with the present applications in order to fill in lacuna and prayed for dismissal of the applications.

6. The learned Judge considering the averments made in the affidavit, counter affidavit, materials available on record and judgments relied on by the parties, dismissed the applications.

7. Against the said order of dismissal dated 26.11.2014 made in I.A.Nos.857 and 858 of 2014 in O.S.No.415 of 2008, the present two Civil Revision Petitions are filed by the petitioners/plaintiffs.

8. Heard the learned counsel for the petitioners as well as the respondents 1 to 4 and perused the materials available on record.

9. From the materials available on record and impugned order of the learned Judge, it is seen that the suit is of the year 2008, trial commenced in the year 2010 and evidence on behalf of the parties were closed in the year 2013. It is also seen that the petitioners filed I.A.Nos.530 and 531 of 2013 for reopening the case and recalling P.W.1 and I.A.No.624 of 2013 to mark the documents one after the other. Those applications were allowed. The petitioners filed I.A.No.339 of 2014 for marking the documents. The said application was also allowed and the documents were marked.

10. As far as witnesses of the respondents are concerned, the learned counsel for the petitioners cross-examined them. The present applications are for reopening the case and recalling D.W.2. The learned Judge has considered the fact that proof affidavit of D.W.2 was filed on 06.06.2013 and the counsel for the petitioners cross-examined D.W.2 on 11.06.2013 and 01.07.2013 for two days, concluded the cross-examination. The petitioners stated that some more questions were omitted to put to D.W.2. The petitioners have

not stated on which aspect they failed to cross-examine D.W.2.

11. It is well settled that a party seeking recalling witness of other party for further cross-examination must indicate the aspect on which they want to cross-examine the said witness. The petitioners cannot be permitted to fill in lacuna by recalling D.W.2 by further cross-examination. The petitioners have filed these applications second time to reopen the case, after the suit was posted for arguments. The reason given by the petitioners to reopen the case and recall D.W.2 is not valid reason.

12. The learned Judge has considered all the above aspects in proper perspective and dismissed the applications by giving cogent and valid reason. There is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 26.11.2014.

13. In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

21.12.2017

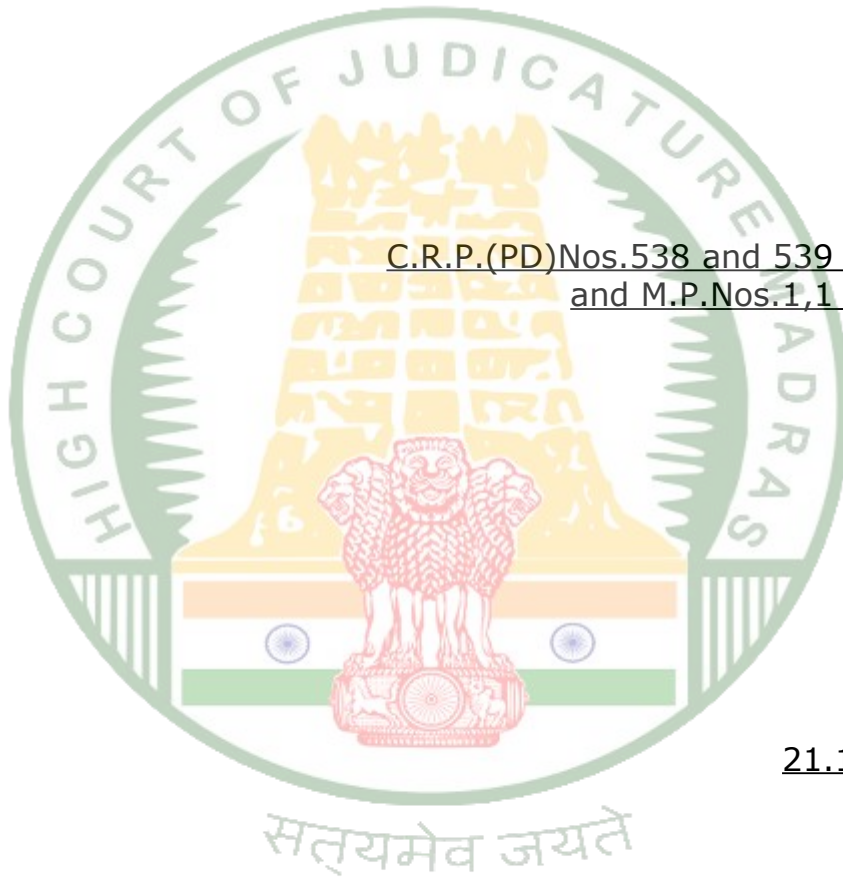
Index:Yes/No
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V.M.VELUMANI, J.

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To

The Principal District Munsif Court, Thiruvannamalai.



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