

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2017

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THE HON'BLE DR.JUSTICE P.DEVADASS

C.R.P.(PD) Nos.2154 and 2155 of 2013 &
M.P.No.1 of 2013

Thamaraiselvan

.. Petitioner
in both petitions

Vs.

1.Muthusamy
2.Dhanabagayam
3.M.Karthikeyan
4.G.Vijayan
5.G.Sellapandy
6.G.Vannagamudi

..Respondents
in both petitions

These two Civil revisions are filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 06.12.2012 passed in I.A.No.407 and 408/2012 in O.S.No.24 of 2003 on the file of the Learned District Munsif-cum-Judicial Magistrate, Pennagaram.

For Petitioner : Mr. I.Abrar Mohamed Abdullah
For Respondents : Mr. M.Selvam

COMMON ORDER

These revisions are at the instance of the plaintiff in O.S.No.24/2003.

2 They are as against the orders passed in I.A.Nos.407 and 408/2012 by the learned District Munsif, Pennagaram, Dharmapuri District.

3 Plaintiff filed the suit for declaration and injunction with respect to the suit property. There are 6 defendants. However, 1st defendant is the contesting defendant. He filed written statement resisting the suit.

4 The plaintiff is said to have purchased one of the item of the suit property from PW2. Plaintiff's evidence was over and defendant's evidence was also over. The suit was posted for arguments.

5 At this juncture, the 1st defendant filed the said two I.As for reopening of the evidence and recalling of PW2 for his cross examination. The Trial Court allowed the petitions.

6 In the Trial Court, plaintiff contended that inspite of several opportunity respondent did not availed of the opportunity to cross examine PW2. Now, after three years, he has filed this I.A with ulterior motive. His aim is to introduce false evidence through PW2. PW2 had already deposed in chief. Now, she seems to have been gained over by the 1st defendant. Practically, now she is in the enemy camp. She is in the hands of 1st defendant. She has been tutored by the 1st defendant to utter falsehood.

7 The learned counsel for the respondent/1st defendant contended that after all an opportunity has been given to the 1st defendant to test the veracity of the evidence of PW2. Even then, plaintiff has opportunity to further cross-examine his own witness with the permission of the Court.

8 I have given my anxious consideration to the arguments of both sides, perused the impugned common order and the materials on record.

9 Admittedly, as on date PW2 who has deposed in chief. He has not been cross examined by the respondents. Ofcourse, four times the suit has been adjourned for cross examination of PW2 by the 1st defendant. He did not availed of the opportunity. Even then, reasonable opportunity should be given to the respondent to cross examine PW2.

10. There is apprehension on the part of the revision petitioner/plaintiff that it is an attempt by the defendant to bring PW2 who is very old to speak falsehood. He adduced evidence in favour of the plaintiff. Only when she entered the witness box and going to speak in favour of the defendant or she is going to stick on to it will be known whether she will speak against the plaintiff. What is in her mind nobody knows. Taking note of the prejudice caused to the plaintiff, the Trial Court has also awarded cost. Therefore, I do not find any illegality in giving opportunity to the respondent.

11 In the circumstances, ordered as under:

(i) This revision fails and it is dismissed.

(ii) The trial Court will fix a date for cross examination of PW2, and it shall be over on that day itself. However, in the light of the evidence given by PW2 after cross examination, a reasonable opportunity should be given to the plaintiffs. At any rate, within three months from the date of receipt of a copy of this order, suit shall be disposed of accordance with law.

(iii) Immediately after disposal of the suit, the Trial Court shall submit the compliance report to this Court.

(iv) Consequently, connected miscellaneous petition is closed.

(v) No order as to costs.

10.04.2017

Speaking/Non Speaking order

Index : Yes / No

Internet : Yes / No

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DR.P.DEVADASS, J.,

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To

1. The Principal District Judge,
Dharmapuri.
2. The District Munsif-cum-Judicial Magistrate,
Pennagaram.

Copy to:

The Assistant Registrar (A.S),
High Court,
Madras.

C.R.P.(PD) No.2154
& 2155 of 2013

Dated: 10.04.2017

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