

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (PD) No.2477 of 2012

1. Sathishkumar
2. Ambiapathy

.. Petitioners

vs

1. Thulasimani
2. Saraswathi

.. Respondents

Civil Revision Petition filed under Article 227 of Constitution of India against the order dated 11.01.2012 passed by the learned I Additional Subordinate Judge, Erode, in I.A.No.1206 of 2011 in O.S.No.668 of 2000.

For Petitioners : Mr.V.Raghavachari

For Respondents : Mr.Mukund (for R1)
for M/s.Sarvabhavman
Associates

No Appearance (for R2)

ORDER

The petitioners, who are defendants 1 and 2 in the suit, have filed this civil revision petition assailing the order dated 11.01.2012 passed by the learned I Additional Subordinate Judge, Erode, in I.A.No.1206 of 2011 in O.S.No.668 of 2000.

2. The first respondent herein filed suit in O.S.No.668 of 2000 on the file of the learned I Additional Subordinate Judge, Erode, *inter alia*, seeking division of suit properties by metes and bounds.

3. The petitioners herein and the second respondent, who are defendants in the suit, filed written statements to the effect that the plaintiff has filed the false, speculative suit attempting to trespass and interfere with the peaceful possession of the suit properties by the defendants.

4. The petitioners herein and the second respondent filed I.A.No.1206 of 2011 in the said suit to reopen the case for further cross-examination of P.W.1.

5. The Court below, by the order under challenge, held that the petitioners and the second respondent herein have filed the said application with an intention to fill up the lacuna and omission and that no specific reason has been stated by them. In such premise, the Court below dismissed the application.

6. Assailing the said order, the present revision petition is filed for the relief stated supra.

7. The learned counsel appearing on behalf of the petitioners submitted that the petitioners were never the cause of delay of the trial and in fact, they were ready for trial and they had filed the application under Section 151 of the Code of Civil Procedure to reopen the plaintiff witness for the purpose of further cross-examination of P.W.1, as P.W.1 is the sole plaintiff and eliciting more information from her is very vital for the purpose of posing a healthy defence by the petitioners.

8. Per contra, the learned counsel appearing on behalf of the first respondent reiterated the reasons that weighed with the Court

below in dismissing the application filed by the petitioners and submitted that no interference is warranted.

9. In the order under challenge, it is recorded that trial commenced on 04.01.2010. It was specifically stated that P.W.1 was cross-examined on 28.01.2010 and 09.02.2010. It is also recorded in the said order that on a petition filed by the defendants/petitioners herein to recall P.W.2 and reopen the plaintiff side evidence, the Court below allowed the same and it was only thereafter P.W.2 was cross-examined.

10. It is the specific case of the petitioners is that some important issues were omitted to be put to P.W.1 during cross-examination on an earlier occasion and on that score, they sought re-opening of the case for further cross-examination of P.W.1.

11. In my considered view, cross-examination of a witness happens to be more important, for the reason that the chief-examination is nothing but unverified version of the witness and it is only during the course of cross-examination that necessary information can be elicited and only such part of the evidence, which withstood the

cross-examination, becomes acceptable.

12. In the instant case, the petitioners claim to have omitted to put some important questions to P.W.1 at the time of cross-examination and it is for this purpose, they have sought to reopen the case for cross-examination of P.W.1. This Court is at a loss to understand as to what would be the prejudice that would be caused to the plaintiff in reopening of the case for cross-examination of P.W.1., as has been recorded by the Court below, if the defendants chose to cross-examine P.W.1. on some issues, on which cross-examination was not done on previous occasion. When a cross-examiner inadvertently omits to cross-examine a witness on an important point, he may, with the leave of the court, re-call that witness for re-cross-examination.

13. In such view of the matter, for meeting the ends of justice, this civil revision petition is allowed and the order under challenge is set aside. The Court below is directed to permit cross-examination of P.W.1., on issues or points which were not already put to P.W.1. by the defendants. The Court below may fix a specific date for cross-examination and direct both sides to be present on such

date, without granting any unnecessary adjournments. No costs.
Consequently, M.P.No.1 of 2012 is closed.

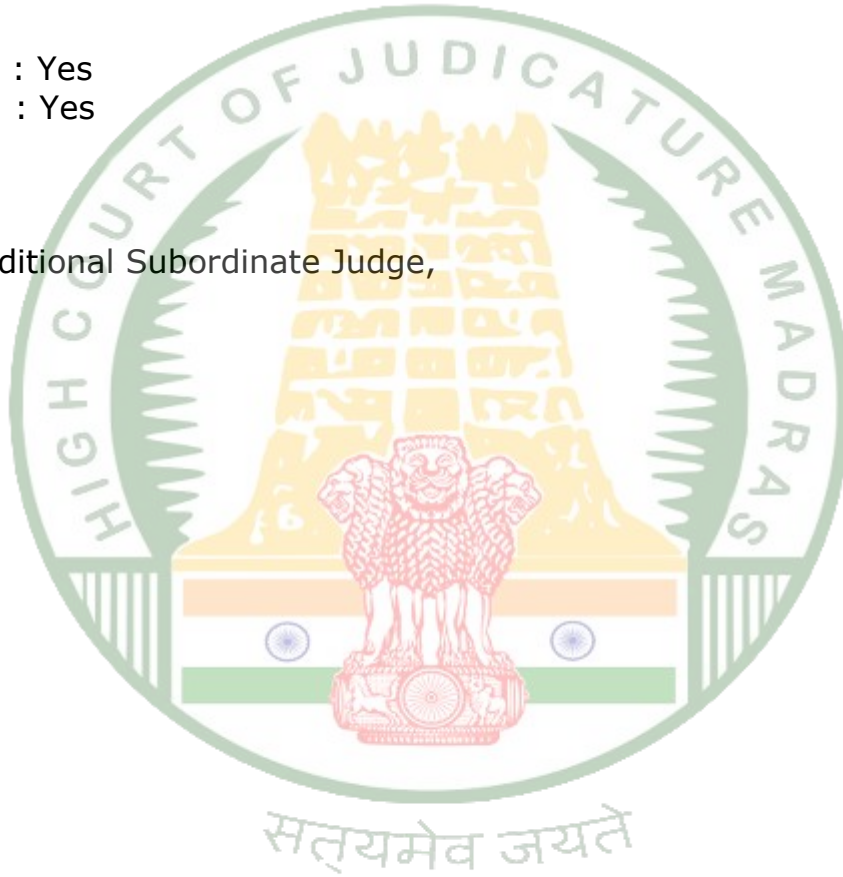
09.01.2017

Note: Issue order copy on 15.03.2018
vs

Index : Yes
Internet : Yes

To

The I Additional Subordinate Judge,
Erode.



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M.V.MURALIDARAN, J.

VS



C.R.P.(PD) No.2477 of 2012
and
M.P.No.1 of 2012

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