

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.10.2018

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) Nos.505 and 506 of 2011  
and  
M.P.Nos.1 and 1 of 2011

Unnamalai

... Petitioner in  
both the C.R.Ps

versus

1.Vasan  
2.Radhakrishnan  
3.Bakthavachalam  
4.Saroja  
5.Amaravathi  
6.Veeraragavan  
7.Nagesh  
8.Raja  
9.Sekar  
10.Kumar  
11.Siva  
12.Sankar

... Respondents in  
both the CRPs

Common Prayer:

Civil Revision Petitions filed under Article 227 of Constitution of India to set aside the fair and decreetal orders passed by the District Munsif cum Judicial Magistrate, Uthiramerur in I.A.Nos.628 and 629 of 2010 in O.S.No.59 of 2007 dated 10.12.2010.

For petitioner : Mr.M.Christopher  
in both the C.R.Ps

For respondents: No appearance for R1  
in both the C.R.Ps

Not ready in notice regarding RR2 to 12  
in both the C.R.Ps

## C O M M O N   O R D E R

The above Civil Revision Petitions are filed challenging the order passed by the learned District Munsif cum Judicial Magistrate, Uthiramerur in I.A.Nos.628 and 629 of 2010 respectively in O.S.No.59 of 2007 for reopening and recalling the evidence of D.W.1.

### 2. The brief facts are as follows:

(i) The revision petitioner had filed a suit in O.S.No.59 of 2007 on the file of the learned District Munsif cum Judicial Magistrate, Uthiramerur for the partition of her ¼<sup>th</sup> share in the suit property against the respondents herein. The case of the revision petitioner is that the respondents 1 to 3 and 6 to 12 had alienated the properties belonging to their joint family to the respondents 4 and 5. The claim of the revision petitioner is denied by the respondents and therefore, the Revision Petitioner had filed this suit.

(ii) The revision petitioner herein was examined as D.W.1 in Chief and subsequently cross examined by the plaintiff's counsel. Thereafter, the matter was posted for further evidence of the defendants.

(iii) The 5<sup>th</sup> defendant, who is the first respondent herein, on 22.11.2010, had come forward with two applications to reopen and recall the cross-examination of D.W.1. In the affidavit filed in support of the applications, he would contend that without his cross-examination, the evidence of D.W.1 has been closed since his counsel was not in station and hence, he was deprived an opportunity to cross-examine D.W.1. It is for this reason that the first respondent has come forward with the impugned applications in question.

(iv) The revision petitioner had filed a counter, wherein she had contended that during cross-examination of D.W.1, she had elicited several admissions and the fifth defendant, who is claiming under D.W.1, is now set up to file these applications in order to whittle down the admissions that she has received in cross. That apart, all the defendants are all raising a common defence and the parties who are together, cannot cross-examine their own witness. Further, despite five hearings the applications were not taken out and the 1<sup>st</sup> respondent's counsel, who was very much present on the date when D.W.1's cross-examination was concluded did not make any attempt to cross examine the witness. Thus, these applications are only an attempt to cause prejudice to the Revision petitioner/plaintiff. The learned Judge allowed the applications without assigning any reasons and has simply stated that considering the circumstances the applications have to be allowed. Thus, challenging these orders the revision petitioner is before this Court.

3. Heard Mr.Christopher, learned counsel for the petitioner. None appeared on the side of the respondents.

4. As rightly pointed out by the learned counsel for the petitioner, the defendants have all raised a common defence and the 1<sup>st</sup> respondent/5<sup>th</sup> defendant is claiming under the other defendants, he being a stranger to the family and only a purchaser of the property from the other defendants.

5.That apart, the revision petitioner/plaintiff has managed to get certain admissions from the defendants as D.W.1 and by allowing the evidence to be reopened and subject D.W.1 to be cross-examined by one of his own parties, there is every chance of the defendants trying to obtain a favourable answer on their side. Such a course should not be encouraged by the Court. The learned Judge has not applied his mind to the issue on hand and has simply passed a one line order, which clearly shows a total non application of mind. Therefore, there is infirmity in the order passed by the learned District Munsif/Judicial Magistrate and is liable to be set aside.

6.In the result, this Civil Revision Petition is allowed. Considering the fact that the suit is of the 2007 and that D.W.1 has already been cross-examined, the learned District Munsif cum Judicial Magistrate is directed to dispose of the said suit within a period of two months from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jen/tsg

To

The District Munsif cum Judicial Magistrate,  
Uthiramerur

+1cc to Ms.N.Valliamma, Advocate, S.R.No.74690

C.R.P. (PD) Nos.505 and 506 of 2011  
and

M.P.Nos.1,1 of 2011

GJII (Co)  
CS/04/12/2018