

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(PD).Nos.862 & 863 of 2018
and
CMP.No.4741 of 2018

1.K.R.Nataraj
2.Nirmalarani

.. Petitioners
in both CRP's

Vs

1.J.Dhonan
2.D.Radhakrishnan
3.D.Subramani
4.Ruckmani
5.D.Yesodha

.. Respondents
in both CRP's

COMMON PRAYER

Civil Revision Petitions filed under Article 227 of the
Constitution of India against fair and final orders dated 29.01.2018
passed by the learned District Munsif, Kotagiri, the Nilgiris in IA.Nos.13 &
14 of 2018 in OS.No.8 of 2012 and prays to set aside the same.

For Petitioners
in both CRP's

: Mr.L.Mouli

COMMON ORDER

The Civil Revision Petition is taken up for final disposal at the admission stage itself.

2. According to the revision petitioners, the revision petitioners have filed applications in IA.Nos.13 & 14 of 2018 in OS.No.8 of 2012 on the file of the learned District Munsif, Kotagiri, Nilgiris to reopen and recall and to appoint the Advocate Commissioner in the aforesaid suit. According to the revision petitioners, the Highway Authorities has broadened Kotagiri - Coonoor Main Road and the suit road has been shortened and reduced as foot-path during the trial. Therefore, the revision petitioners filed the application to reopen the petitioners'side evidence for the purpose of amending the plaint in respect of shortened measure of the suit road. The said application was dismissed by the court below. Therefore, the revision petitioners have filed the present Civil Revision Petition before this Court.

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3. The learned counsel for the revision petitioners would submit that the revision petitioners came to know that the road has been widened by the Authorities, immediately they filed the instant applications. Therefore, the said applications filed by the revision petitioners are within the time. There is no delay on the part of the

revision petitioners. Therefore, the order of the court below is liable to be set aside.

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

5. On perusal of the records, the aforesaid suit is posted for trial and the evidence of both sides were concluded and posted for arguments of the revision petitioners / plaintiffs. At the stage, the instant applications have been filed by the revision petitioners / plaintiffs. Further, on going through the affidavit filed by the revision petitioners in the aforesaid applications, the revision petitioners have not given any satisfactory reasons to reopen and recall and to appoint the Advocate Commissioner.

6. It is useful to extract the decision of the Hon'ble Supreme Court in the case of **Ram Rati Vs. Mange Ram (dead) through legal representatives** reported in **(2016) 11 SCC 296**, wherein it has been held as follows:

"12. In Vadiraj Naggappa Vernekar Vs. Sharadchandra Prabhakar Gogate, this principle has been summarised at paras 25, 28 and 29 (SCC pp. 414-15)

25. In our view, though the provisions of

Order 18 Rule 17 of the Civil Procedure Code have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable the court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

28. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.

29. It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear

any ambiguity that may have arisen during the course of his examination".

7. It is also useful to extract the decision of this Court in the case of **Gayathri Vs. M.Girish** reported in **2017 (4) CTC 321**, wherein the Hon'ble Supreme Court has held as follows.

12. *In the case at hand, it can indubitably be stated that the Defendant-Petitioner has acted in a manner to cause colossal insult to justice and to the concept of speedy disposal of Civil litigation. We are constrained to say the virus of seeking adjournment has to be controlled. The saying of Gita "Awake! Arise! Oh Partha! is apt here to be stated for guidance of Trial Courts. In view of the aforesaid analysis, we decline to entertain the Special Leave Petition and dismiss it with Costs, which is assessed at Rs.50,000/- (Rupees fifty thousand only). The Costs shall be paid to the State Legal Services Authority, Karnataka. The said amount shall be deposited before the Trial Court within eight weeks hence, which shall do the needful to transfer it to the Stage Legal Services Authority. If the amount is not deposited, the right of defence to examine its Witnesses shall stand foreclosed.*

8. In the light of the facts and circumstances of the case and the decisions cited supra, the order of the court below is sustainable. There is no warrant to interfere with the orders of the court below. Hence, the Civil Revision Petitions fail and the Civil Revision Petitions are dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

06.03.2018

Speaking/Non-Speaking order

Index :Yes/No

Internet:Yes/No

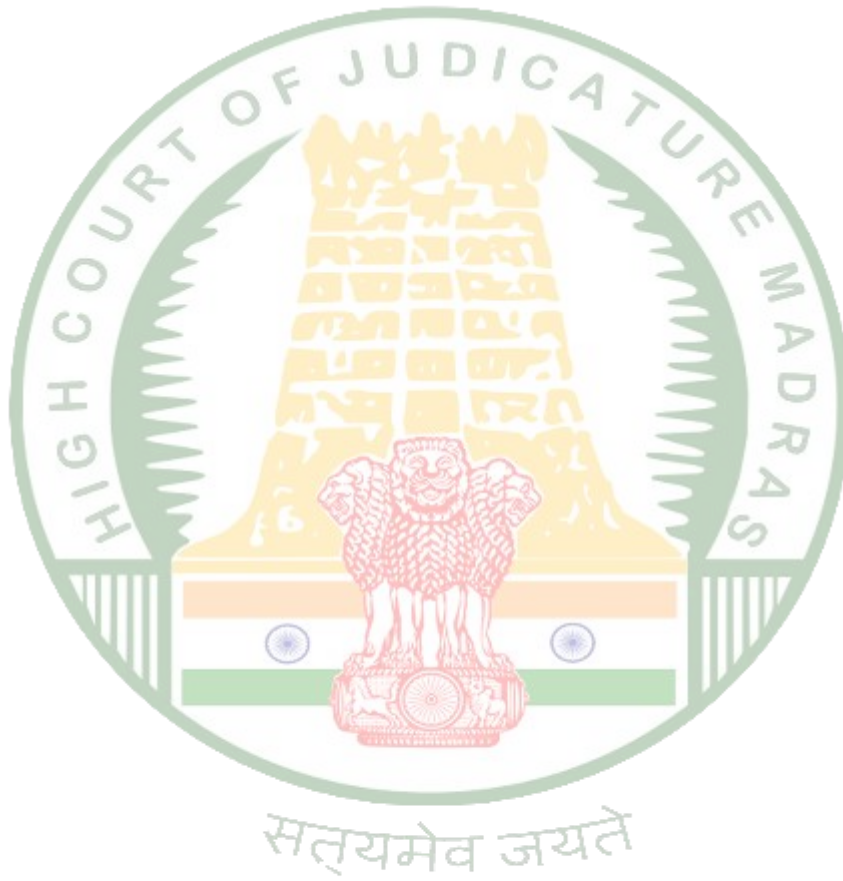
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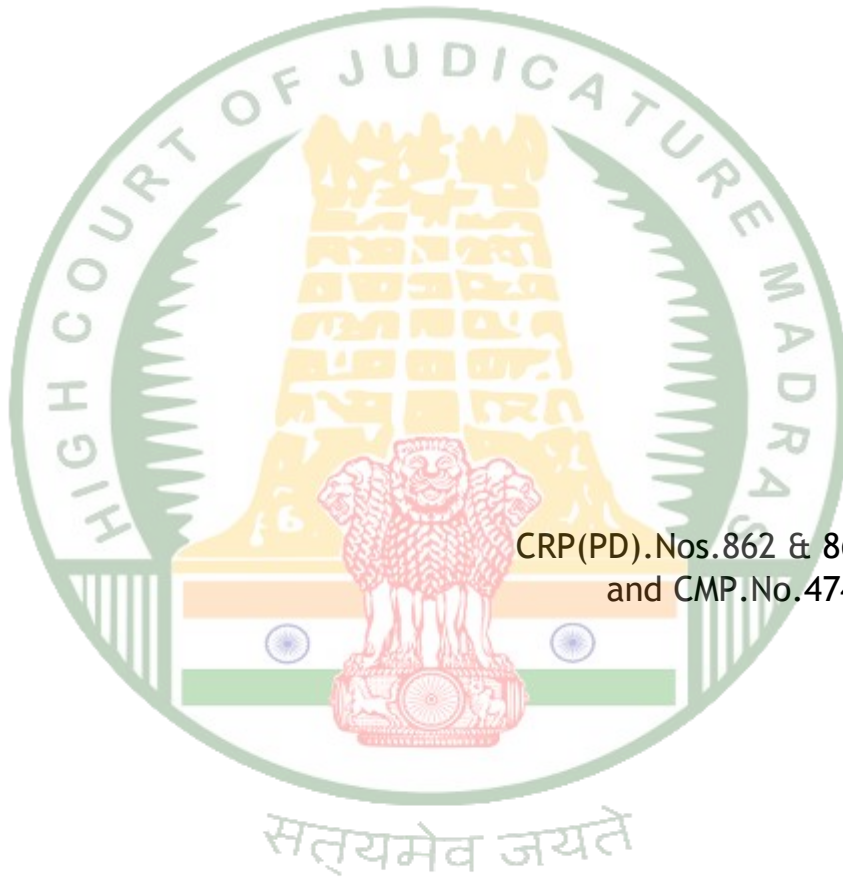
The learned District Munsif,
Kotagiri,
The Nilgiris



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