

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 7.2.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.2533 of 2016 and 2751 of 2016 and
C.M.P.No.13050 and 14103 of 2016

Govindamma

... Petitioner/2nd Defendant

Vs.

1 Gunasekaran
2 Selvakumar
3 Ashok Kumar

... Respondents/Plaintiffs

This Civil Revision Petitions are filed under Article 227 of Constitution of India against the order dated 31.3.2016 made in I.A.No.263 and 264 of 2015 in O.S.No.133 of 2006 on the file of the District Munsif, Gudiyattam.

For Petitioner : Mr.P.Vasanth

For Respondent : Mr.K.A.Ravindran

ORDER

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According to the petitioner, the petitioner has filed an application in I.A.No.263 of 2015 under Section 151 of C.P.C. to reopen plaintiffs' side evidence and another application in I.A.No.264 of 2015 under Order 18 Rule 17 r/w Section 151 of C.P.C. for recall of plaintiffs' side witness, the Deputy Tahsildar, Gudiyatham for cross examination of the said witness. Since the trial court

dismissed the aforesaid applications, the petitioner has filed the present civil revision petitions.

2 According to the petitioner, the suit posted for cross examination of plaintiffs side witnesses, without giving opportunity to the petitioner for cross examination of P.W.2, Deputy Tahsildar, Gudiyatham, plaintiffs side evidence was closed. Thereafter, the petitioner has filed the aforesaid applications to reopen plaintiffs side evidence and to recall the Deputy Tahsildar for cross examination. Without giving opportunity to the petitioner, the court below dismissed the applications. No prejudice would be caused to the respondent, if the said applications are allowed. Hence, the orders passed by the court below are liable to be set aside.

3 Per contra, the learned counsel for the respondent would submit that the suit was posted for cross examination of P.W.2, on 18.11.2014 and subsequently adjourned to 27.11.2014, 9.12.2014, 16.12.2014, 6.1.2015, 28.1.2015, 6.2.2015, 17.2.2015, 23.2.2015, 3.3.2015 and 11.3.2015 for cross examination of the said witness. After giving sufficient opportunities to the petitioner for cross examination of the said witness, examination of the plaintiffs' witnesses was closed by the trial court. Therefore, the court below has rightly rejected the applications.

4 It is seen from the impugned order that P.W.2 was present in the court below on 18.11.2014 and thereafter, more than nine occasions posted for cross examination on the side of the petitioner. Despite opportunity given to the petitioner, he has not chosen to cross examine P.W.2. There is no satisfactory reason for his failure to cross examine the witness. However, in the interest of justice, this Court is inclined to give one more opportunity to the petitioner for cross examination of P.W.2 in the above suit, therefore, the court below has to fix a date for appearance of P.W.2 for cross examination, by the petitioner/defendant and thereafter proceed with the trial. Further, counsel for the petitioner also undertakes that, if he has not cross examine P.W.2 on the date fixed by the court below for cross examination of P.W.2, the court below can proceed further with the trial in the suit.

5 In view of the undertaking given by the counsel for the petitioner, in order to give one more opportunity to the petitioner, this Court is inclined to interfere with the order passed by the court below and accordingly, the following order is passed:

(i) The orders passed by the learned District Munsif, Gudiyatham in I.A.No.263 and 264 of 2015 in O.S.No.133 of 2006 are set aside on payment of cost of Rs.2500/- to the respondents within a period of two weeks from today.

(ii) The court below is directed to fix a date for appearance of P.W.2 in the aforesaid suit for cross examination by the petitioner.

(iii) In fine, Civil revision petition is allowed with the above directions. Connected miscellaneous petitions are closed.

7.2.2018

Speaking/Non speaking order

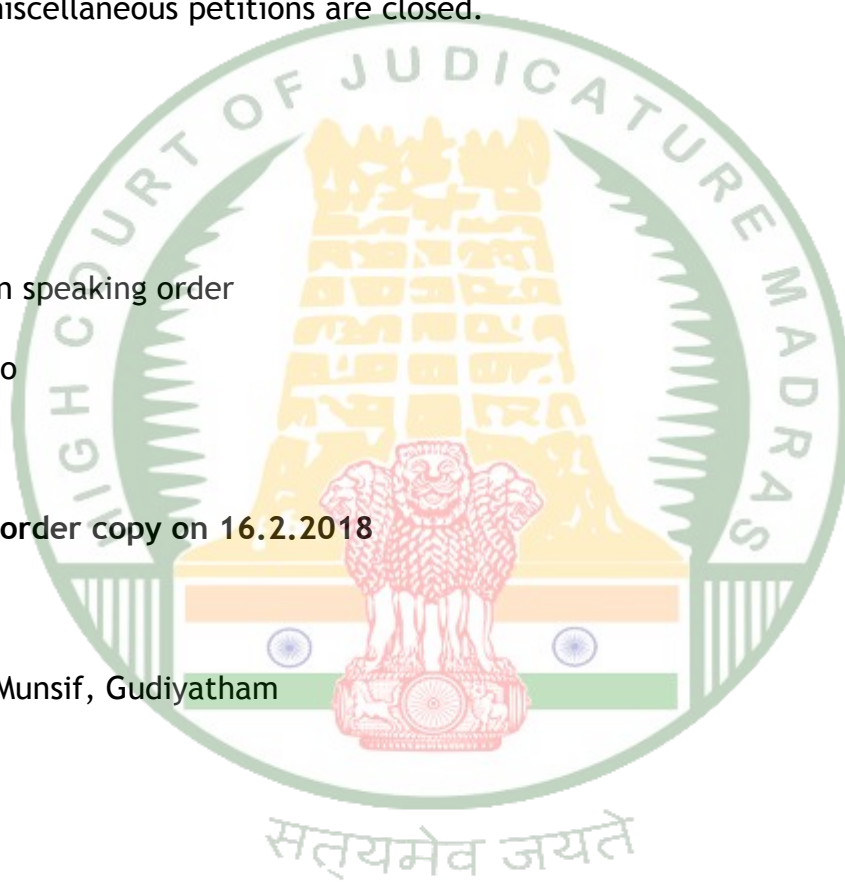
Index: Yes/No

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Note: Issue order copy on 16.2.2018

To

The District Munsif, Gudiyatham



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D.KRISHNAKUMAR,J.

vaan



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and C.M.P.No.13050 and 14103 of 2016

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