



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 14.08.2018
CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

C.R.P. (MD).No.305 of 2017 and
C.M.P. (MD)No.1516 of 2017

1. Nesadurai
2. Inbakoothan

... Petitioners/Respondents 3&5/
Defendants 3 & 5

Vs.

1. Rajamuthu

... 1st Respondent/Petitioner/
2nd Defendant

2. Packiyaraj

... 2nd Respondent/1st Respondent/
Plaintiff

3. Sankaramoorthy

4. Selvaraj

... Respondents 3&4/Respondents 2&4
Defendants 1 & 4

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow the Civil Revision petition by setting aside the Fair Order and Decreetal Order passed in I.A. No.573 of 2015 in O.S.No.87 of 2007, dated 18.08.2016 on the file of the learned Principal District Munsif cum Judicial Magistrate, Nanguneri.

For Petitioners : Mr.N.Ga.Nataraj
for Meenakshi Sundaram

For R-1 & R-2 : Mr.S.Krishnan

For R-3 & R-4 : No appearance.

ORDER

The second respondent herein filed O.S.No.87 of 2007 on the file of the Court of the District Munsif, Nanguneri, for directing the third respondent herein to execute a registered sale deed in respect of the plaint scheduled property in his favour and that of defendants 2 and 3.

2. In the said suit, the second defendant remained ex-parte. He later filed his written statement also. He filed I.A.No.573 of 2015 for recalling D.W.1 and D.W.2. The said application was allowed on 18.08.2016. The correctness of the said order is under challenge in this Civil Revision petition.



3. The learned counsel appearing for the Revision petitioners contended that the second defendant is actually sailing with the plaintiff. They are blood brothers born to one Santhosh Nadar. He took this Court to the written statement filed by the second defendant Rajamuthu. It appears that the said Rajamuthu is supporting the case of the plaintiff. Therefore, the contention of the learned counsel for the Revision petitioners is that the second defendant cannot be allowed to fill up the lacuna in order to favour the plaintiff. He placed reliance on the decision of the Hon'ble Supreme Court reported in 2016 (5) C.T.C. 555(Ram Rati V. Mange Ram). The Hon'ble Supreme Court has held that the power to recall witness can be exercised at any stage of the suit. But this power cannot be invoked to fill up omission or lacuna in the evidence already led by a witness. This being the discretionary power of the Court should be exercised sparingly in appropriate cases.

4. Though there is a considerable force in the submission made by the learned counsel for the Revision petitioners, I have to necessarily hold that the first respondent being the party to the suit proceedings cannot be deprived of the right to cross examine the witnesses. It is not the case of the Revision petitioners that the first respondent herein had already cross examined D.W.1 and D.W.2. The Court can decide on the sequence in which the parties will lead evidence. But then the right to cross examine can never be taken away. Therefore, this Court sustains the order impugned in this Civil Revision petition.

5. But then the matter cannot rest there. The first respondent is not taking a stand at variance that of the plaintiff. The first respondent cannot be allowed to adduce evidence hereafter. The learned counsel for the first respondent submitted that he would confine his rights to cross examine D.W.1 and D.W.2 alone and he would not let in any independent evidence.

6. Recording the said undertaking given by the learned counsel for the first respondent, the order passed by the learned Principal District Munsif cum Judicial Magistrate, Nanguneri, in I.A.No.573 of 2015 in O.S.No.87 of 2007, dated 18.08.2016, is sustained.

7. The Civil Revision petition stands dismissed, accordingly. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl.side)

/True Copy/

Sub Assistant Registrar(CS-III)

To



2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai. **(2 copies)**

+1CC to Mr.N.Ga.Nataraj, Advocate, SR.No.79054

C.R.P.(MD).No.305 of 2017 and
C.M.P.(MD)No.1516 of 2017
14.08.2018

PMU
ES/SV/SAR 3/17.09.2018/3P/5C