

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2019

CORAM :

The HON'BLE MR.JUSTICE M.DURAISWAMY

C.R.P.Nos.4710 & 4711 of 2013
and M.P.Nos.1 & 1 of 2013

K.Rajagurunathan ... Petitioner in both C.R.Ps
Vs.
P.Mahalingam ... Respondent in both C.R.Ps

Petitions filed under Article 227 of the Constitution of India against the common order dated 06.09.2013 of the II Additional District Munsif, Kallakurichi made in I.A.Nos.1216 & 1217 of 2013 in O.S.No.795 of 2007 dismissing the application filed by the petitioner herein to recall P.W.1 and to re-open the evidence of P.W.1 for cross examination.

For Petitioner : Mr.D.Balachandran (in both C.R.Ps)
For Respondent : no appearance (in both C.R.Ps)

C O M M O N O R D E R

Challenging the orders passed in I.A.Nos.1217 & 1216 of 2013 in O.S.No.795 of 2007 on the file of the II Additional District Munsif, Kallakurichi, the defendant has filed the above Civil Revision Petitions.

2.The plaintiff filed the suit in O.S.No.795 of 2007 for declaration and permanent injunction. The defendant filed his counter and was contesting the suit. When the trial Court took up the matter for trial, after the closure of the evidence on the side of the plaintiff and when the suit was posted for examination of the defendant's side witness, the defendant took out applications in I.A.No.1217 of 2013 to re-open and I.A.No.1216 of 2013 to re-call P.W.1 for cross examination. In the affidavit filed in support of the petitions, the defendant has stated that without giving an opportunity to him to cross examine P.W.1, the trial Court posted the matter for the examination of D.Ws. The plaintiff filed his counter wherein he has stated that the plaintiff's proof affidavit was filed on 04.01.2010 and the suit was adjourned on eight occasions for the cross examination of P.W.1. The suit was adjourned on

10.02.2010, 23.02.2010, 11.03.2010, 17.03.2010, 23.03.2010, 27.03.2010 for the cross examination of P.W.1. When the suit was reserved for judgment on 09.04.2010, the defendant filed an application to cross examine P.W.1. That apart, the defendant has also filed a Transfer Petition in Tr.O.P.No.5 of 2011. The trial Court, taking into consideration the case of both parties, dismissed the applications. Aggrieved over the same, the defendant has filed the above Civil Revision Petitions.

3.While dismissing the applications, the trial Court observed that the defendant has filed the applications for the 3rd time to re-open and re-call and therefore, the applications cannot be accepted. That apart, the trial Court also observed that the suit was adjourned on various dates from 08.06.2010 to 22.01.2011 for the cross examination of P.W.1. However, the defendant chose not to cross examine P.W.1. Thereafter, for the cross examination of P.W.2 also the matter was adjourned from 15.11.2011 to 02.07.2013. However, the defendant did not cross examine P.W.2 also. Therefore, from the materials available on record, it is clear that the defendant was given sufficient opportunities to cross examine P.W.1 and P.W.2. In spite of the same, the defendant chose not to cross examine P.W.1 and P.W.2 for nearly three years. The defendant has filed the applications without giving any acceptable reason to re-open and re-call. In the absence of acceptable reason given by the defendant, the trial Court dismissed the applications. That apart, the trial Court also observed that only to fill up the lacuna, the defendant has filed the applications to re-open and re-call. The reasoning given by the trial Court is perfectly correct. I do not find any ground to interfere with the orders passed by the trial Court. The Civil Revision Petitions are devoid of merits and the same are dismissed.

4.Since the suit is of the year 2007, I direct the II Additional District Munsif, Kallakurichi to dispose of the suit in O.S.No.795 of 2007 within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

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-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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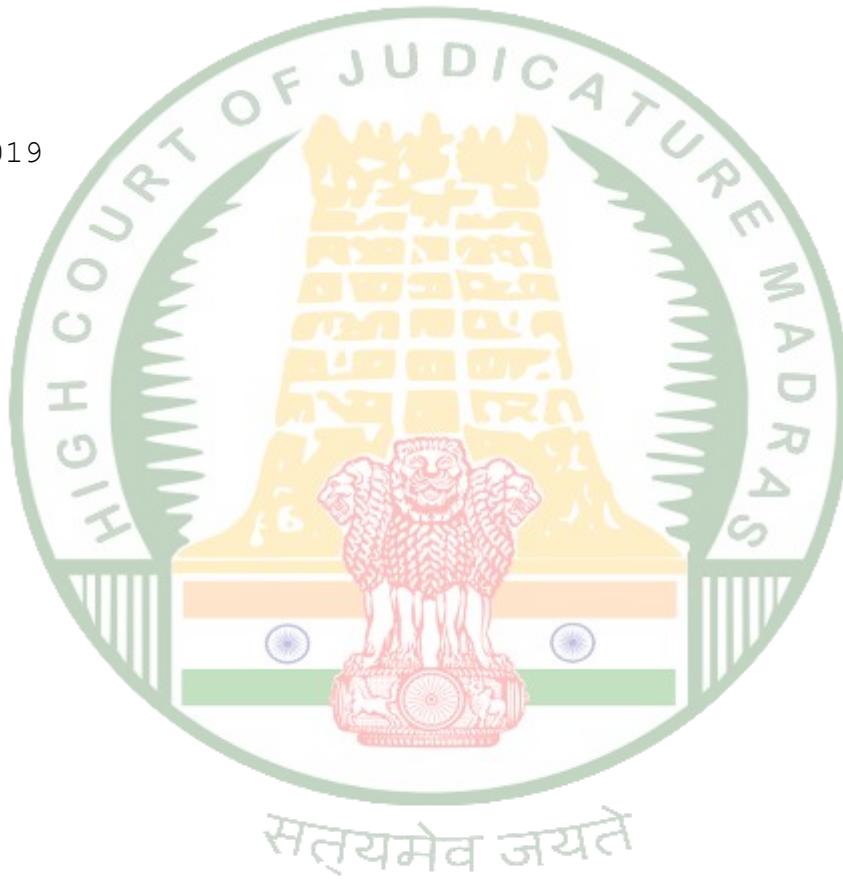
To

1.The II Additional District Munsif, Kallakurichi

+1 cc to Mr.D.Balachandran Advocate sr84301

C.R.P.Nos.4710 & 4711 of 2013
and M.P.Nos.1 & 1 of 2013

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