

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.04.2019

CORAM
THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.8858 of 2019
Crl.M.P.Nos.4723 & 4726 of 2019

1.Esha Emu Farms India Pvt. Ltd.,
Rep. by its Director,
K.Tamizhagan,
No.210/5, NH 47 Road,
Near Excel Engineering College,
Pallakkapalayam,
Thiruchengode Taluk,
Erode District.

2.K.Tamizhagan,
S/o.Kasilingam,
The Director,
Esha Emu Farms India Pvt. Ltd.,
Residing at:
Backside of Sharja Bakes,
Salem Main Road,
Komarapalayam - 638 183.

3.K.S.Sakthi,
S/o.Sathasivam,
The Director,
Esha Emu Farms India Pvt. Ltd.,
Residing at:
Near Kaliamman Koil,
Thiru Vi.Ka. Road,
Komarapalayam - 638 183.

.. Petitioners/Accused

Vs

P.Balasubramani

.. Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the order passed in C.M.P.No.1963 of 2018 in S.T.C.No.258 of 2018 on the file of the Special Judicial Magistrate (Land Grabbing Cases), Salem dated 18.12.2018 and set aside the same.

For Petitioners: Mr.C.K.M.Appaji

For Respondent : Mr.S.Kaithamalai Kumaran

O R D E R

This Criminal Original Petition has been filed to set aside the order passed in C.M.P.No.1963 of 2018 in S.T.C.No.258 of 2018, dated 18.12.2018 on the file of the Special Judicial Magistrate (Land Grabbing Cases), Salem thereby, dismissing the application filed by the petitioner under Section 311 Cr.P.C for cross examination of PW1.

2.The learned counsel for the petitioner would submit that the petitioners are the accused and they were charged for the offence under Sections 138 of the Negotiable Instruments Act. The respondent herein filed a proof affidavit before the trial Court and examined himself as PW.1 on 30.10.2017. On the date of cross-examination of PW.1, the petitioner's counsel could not be able to cross examine him. Therefore, he sought for one more opportunity to the petitioner to defend his case by effective cross examination. Hence, he prayed to set aside the order passed by the trial Court.

3.Per contra, the learned counsel for the respondent would submit that PW.1 was examined on 30.10.2017. Thereafter, on 25.09.2018, 04.10.2018, 11.10.2018 and 16.10.2018, the case is posted for cross-examination of PW.1. But, the petitioner's counsel did not cross-examine PW.1 in the above said dates. Therefore, the learned Magistrate rightly dismissed the petition and there is absolutely no merits to consider the request made by the petitioner.

4.Heard Mr.C.K.M.Appaji, learned counsel appearing for the petitioner and Mr.S.Kaithamalai Kumaran, learned counsel appearing for the respondent.

5.The petitioner are the accused and they are facing trial for the offence under Sections 138 of the Negotiable Instruments Act. It is seen from the records that PW1 was examined in the year 2017. Thereafter, on 25.09.2018, 04.10.2018, 11.10.2018 and 16.10.2018, the case was posted for cross-examination of PW.1. But, the petitioner's counsel did not cross-examine PW.1 as was held elsewhere.

6.Considering the facts and circumstances of this case, this Court is inclined to give one more opportunity to defend his case by proper and effective cross examination. Accordingly, the order passed by the learned Special Judicial Magistrate (Land Grabbing Cases), Salem is hereby set aside and the petitioner is permitted to cross examine PW1 on a single day. The trial Court is directed to fix a date for cross-examination and issue summons to PW1. It is made clear that if the petitioner fails to cross-examine the above said witness on

the day fixed by the trial Court, the learned Special Judicial Magistrate (Land Grabbing Cases), Salem is directed to proceed further with the trial, in accordance with law.

7. With the above direction, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

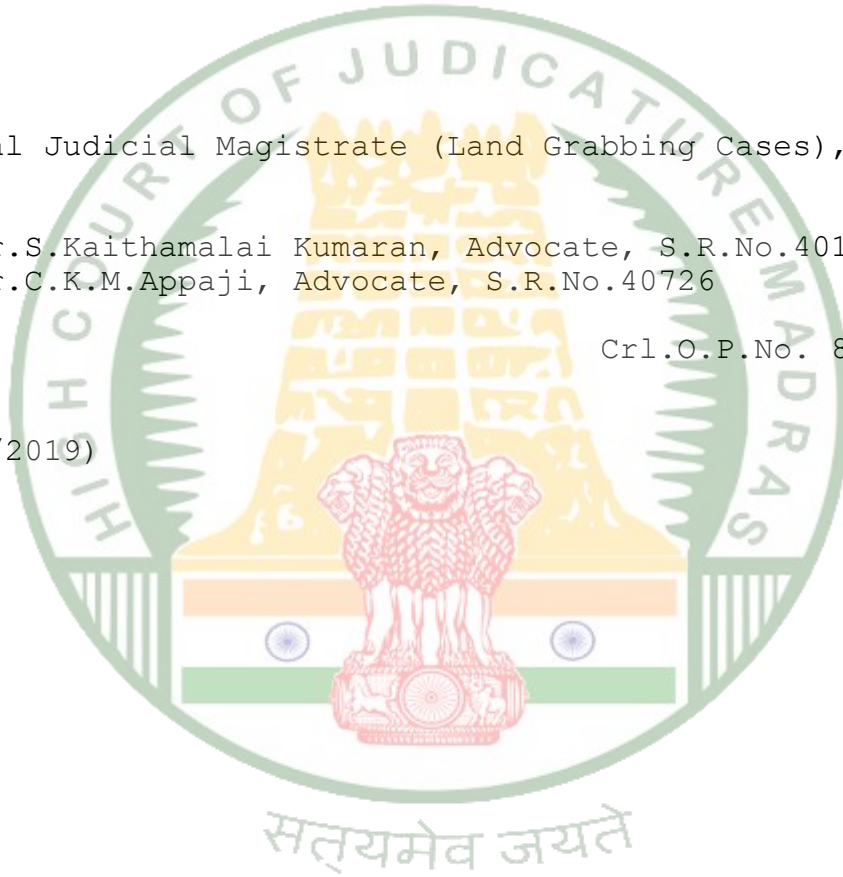
The Special Judicial Magistrate (Land Grabbing Cases),
Salem.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.40177
+1cc to Mr.C.K.M.Appaji, Advocate, S.R.No.40726

CrI.O.P.No. 8858 of 2019

RSI (CO)

RRS (08/07/2019)



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