

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **12.06.2019**

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(PD) No.1795 of 2019

and

C.M.P.No.11761 of 2019

P.Vellingiri

: Petitioner

Vs.

1.Arukkani Ammal

2.Renuga Devi

: Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the order passed in I.A.No.1 of 2019 in O.S.No.428 of 2017, dated 30.04.2019 on the file of the learned Principal District Judge, Coimbatore.

For Petitioner

:

Mr.C.Deivasigamani

ORDER

This Civil Revision Petition is directed against the order passed by the Trial Court rejecting the request to recall the defendants' side witness D.W.2.

2. The petitioner is the second defendant in the suit in O.S.No.428 of 2017. He examined one of the attesting witnesses of the Will propounded by him as D.W.2. The said witness deposed that he did not see the testator affixing his thumb impression in the said Will. Therefore, he was treated as a hostile witness and the revision petitioner/second defendant cross-examined him elaborately. Thereafter,

the revision petitioner/second defendant has examined two other witnesses as D.W.3 and D.W.4 on his side.

3. D.W.2 was examined before the Trial Court on 05.06.2018. After a period of about one year on 09.04.2019 the revision petitioner/second defendant filed an Interlocutory Application to recall D.W.2 to clarify certain issues regarding signatures on the 5th page of the Will. Paragraph Nos.2 and 3 of the affidavit filed in support of the application in I.A.No.1 of 2019 are extracted hereunder:

"2. While examining the witness on 05.06.2018 my counsel has not questioned about the particulars regarding the signature found in Page No.5 of Ex.P.1 and it is not marked and the signature found in the back of Page No.1 is not marked."

3. Further regarding the topography of the Sub Registrar's Office at Negamam has not been questioned. Since the witness has not been questioned with regard to place where he has put his signature, he has to be examined."

4. The question now raised before this Court is whether D.W.2, who turned hostile against the defendants, can be treated as defendant witness any further and can he be asked to depose on the side of defendants and what will be the credibility and reliability of such witness.

5. According to the learned counsel for the revision petitioner, as per Section 138 of the Indian Evidence Act, 1872, any witness can be recalled and re-examined and cross-examined. Therefore, he would contend that even a hostile witness can be recalled to let in further evidence.

6. I have considered the submissions made by the learned counsel for the revision petitioner.

7. Admittedly, the revision petitioner, who is arrayed as the second defendant in the suit, propounded a Will executed in his favour. In order to prove the Will, he examined D.W.2 as his witness, who turned hostile. Thereafter, the revision petitioner/second defendant cross-examined him elaborately.

8. It is well settled that the cross-examination is done by the adverse party. By cross-examining a witness, normally, the credibility of the witness is sought to be impeached or a statement or the case of the adverse party is sought to be disproved. In that sense, the party, who cross-examines, becomes the adverse party.

9. In the instant case, the revision petitioner, though he introduced D.W.2, became an adverse party by cross-examining the hostile witness. After

period of one year, he files a petition to re-open and recall the very same hostile witness, namely D.W.2 to let in evidence in his favour. The reason stated for recalling him is to clarify certain factual aspects. Once a witness is treated as hostile witness and a party cross-examined him is called an adverse party, the status of the witness gets changed. In this case, D.W.2 has lost his status as witness of the second defendant and in that circumstances, the second defendant, being the adverse party, is not entitled to examine the very same witness in chief to prove his case. The Trial Court has rightly declined to recall such witness to depose in favour of the adverse party. Further, the time gap of one year from the date of cross-examination and the date of filing of petition speaks volumes.

10. As per the Law of Evidence, re-examination of a witness shall be conducted immediately. Here, in the instant case, hostile witness is called to depose in favour of adverse party. Such procedure is not contemplated in law. The Trial Court has rightly dismissed the application, as it is contrary to Law of Evidence. Thus, I do not find any discrepancy in the order passed by the Trial Court. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

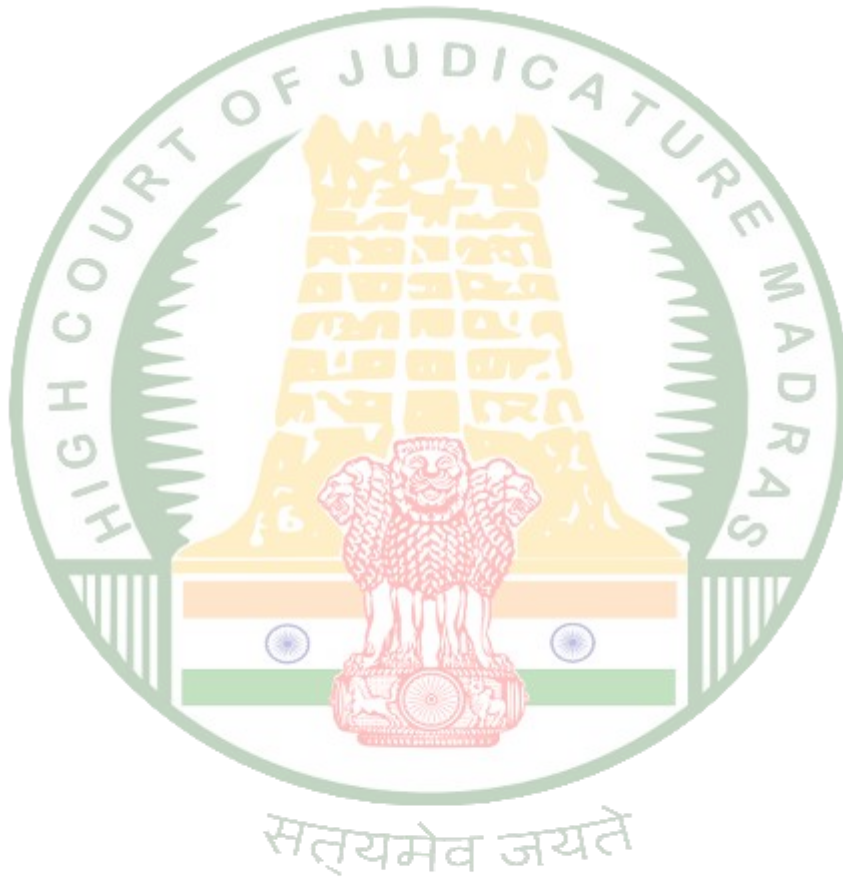
12.06.2019

Index:Yes/No

Internet: Yes/No

SML/bkn

To
The Principal District Judge,
Coimbatore.

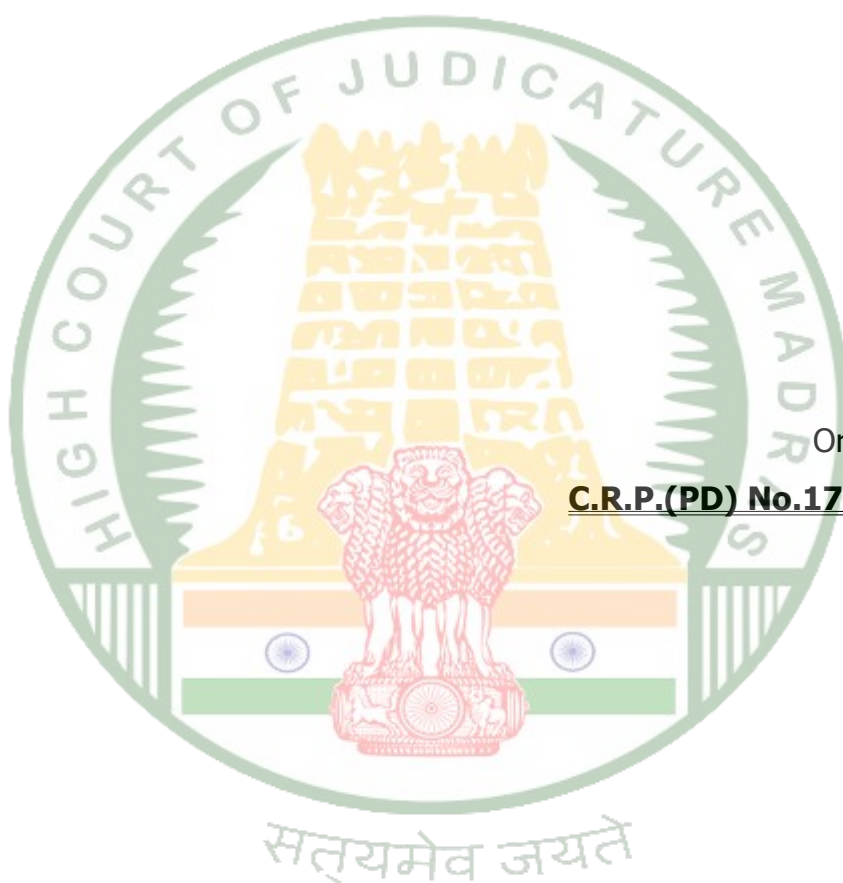


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M.GOVINDARAJ, J.

SML/bkn



Order made in

C.R.P.(PD) No.1795 of 2019

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