

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 08TH DAY OF AUGUST 2019

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

A.No.5054 of 2019

in

C.S.NO.967 OF 2017

S.Peter,
S/o.Soosiyya Pillai,
Aged about 63 years
Office at Madha Nagar,
Somangalam Road,
Madha Engineering College,
Kundrathur, Chennai 600 059 ...Plaintiff

-vs-

D.R.Balakrishna Raja,
S/o.S.P.Dhanushkodi Raja,
No.9, Old No.6, Venkatesan Street,
T.Nagar, Chennai 600 017 ...Defendant

A.No.5054 of 2019:

D.R.Balakrishna Raja,
S/o.S.P.Dhanushkodi Raja,
No.9, Old No.6, Venkatesan Street,
T.Nagar, Chennai 600 017 ...Applicant/Defendant

-vs-

S.Peter,
S/o.Soosiyya Pillai,
Aged about 63 years
Office at Madha Nagar,
Somangalam Road,
Madha Engineering College,
Kundrathur, Chennai 600 059 ...Respondent/Plaintiff

Application praying that this Hon'ble Court be
pleased to expunge marking of Exhibit P21 series on
11.06.2019 through PW1, after closing of PW1's evidence

This application coming on this day before this court for hearing the court made the following order:

This application has been filed seeking to expunge the marking of Ex.P21 series on 11.06.2019 through PW1, after the evidence of PW1 had been closed.

2. A perusal of the proceedings before the learned Master would show that there has been a procedural lapse in examination of PW1. PW1 was examined in chief on 11.03.2019. He was also cross examined on various dates till 23.04.2019. From the deposition of PW1 dated 23.04.2019, it is seen that a question been put to him regarding the production of certain documents, the existence of which he had admitted. Subsequently, on 03.06.2019, the learned counsel for the defendants submitted that there is no further cross examination of PW1. The suit was posted for evidence of PW2, implying thereby the evidence of PW1 was closed and the witness was discharged. On 11.06.2019, when the matter was taken up for hearing, PW1 was allowed to enter the witness box and produce certain bank statements. The same were marked and it was recorded by the learned Master that the counsel appearing for the defendant had agreed to marking of documents. It is also recorded that there is no further cross examination of PW1. This procedure adopted by the Master which is being taken exception to by the learned counsel for the defendants. According to him, when the evidence of PW1 had been closed and the suit was adjourned for the evidence of PW2, the Master erred in allowing PW1 to get into the witness box and mark Ex.P21 without an application to reopen the evidence. In cross examination, a question is put to the witness regarding the existence of documents, he admitted the existence of documents and undertook to produce it at later point of time. The said document cannot be marked without recalling such witnesses, more so, when the evidence was

closed and the suit was adjourned for evidence of PW2 on a subsequent date. The fact that the counsel had not objected or consented (the same is also disputed) would alone will not empower the Master to allow marking of documents through a witness who has already been discharged. Therefore, I find the procedure adopted by the Maser in marking of Ex.P21 is incorrect.

3. In view of the above, this application is allowed. The marking of Ex.P21 on 11.06.2019 is expunged in as much as there is violation of the procedure and the evidence of PW1 is reopened without obtaining a proper order from the Court.

Sd/.R.S.M.J

08.08.2019

//Certified to be a true copy//
Dated this the day of 2019.

R.s/03.09.2019

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment/Decree in this format.

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