



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 16.04.2019
DELIVERED ON : 30.04.2019
CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No. 2125 of 2015
and
M.P. (MD) No. 1 of 2015

1.K.Ramasamy Naicker (Died)

2.Kamalaveni

3.Gokulakrishnan .. Petitioners/1st Respondent/1st Defendant

(Petitioners 2 and 3 are brought on record as legal heirs of the deceased first petitioner as per order dated 12.03.2019 in C.M.P. (MD) Nos. 2389 to 2391 of 2019)

Vs.

1.R.Ramesh

2.S.Mohan Raj

3.Muthusamy

(Except the first respondent others are only formal parties, hence, the respondents 2 and 3 are given up in the C.R.P)

..2nd & 3rd Respondents/ 2nd & 3rd Respondents/
2nd & 3rd Defendants

Prayer: This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order made in I.A.No.708 of 2015 in O.S.No.188 of 2009 by the District Munsif Court, Oddanchathiram dated 24.08.2015.

For Petitioners

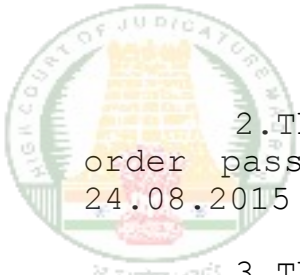
: Mr.D.Venkatesh

For Respondents

: Mr.H.Lakshmi Shankar

ORDER

Heard Mr.D.Venkatesh, learned counsel appearing for the petitioners and Mr.H.Lakshmi Shankar, learned counsel appearing for the respondents.
<https://hcservices.ecourts.gov.in/hcservices/>



2.This Civil Revision Petition has been filed against the order passed in I.A.No.708 of 2015 in O.S.No.188 of 2009 dated 24.08.2015 on the file of learned District Munsif, Oddanchathiram.

3.The first petitioner herein is the first defendant, the first respondent herein is the plaintiff and the respondents 2 and 3 herein are the defendants 2 and 3 in the suit. The petitioners 2 and 3 are the legal heirs of the first petitioner. The first respondent has filed a suit in O.S.No.188 of 2009 before the District Munsif, Oddanchathiram for injunction and in that suit, the first respondent filed an interim petition in I.A.No.708 of 2015 to recall the witness. That petition was allowed by the trial Court. Against which, the petitioners have filed this revision petition.

4.On the side of the petitioners, it is stated that the cross examination of P.W.1 was over and at the time of the arguments, only the first respondent came forward with the petition to examine him as a witness and to recall P.W.1. When the matter was reserved for Judgment, this petition was filed to fill up the lacuna. After six years, the petitioners want to examine themselves as witnesses and only to drag on the proceedings, this petition is filed. Already the father of the petitioners was examined before this Court and that permission from the Court to examine the father of the petitioners before examining the petitioners was not filed. There is no necessity to examine the petitioners. No prayer to scrape the evidence of P.W.1 is filed. If the recall petition is allowed and the petitioners were examined as witnesses, there will be any contradictions between their evidence and the evidence already given on the side of the petitioners and prayed the revision to be allowed.

5.On the side of the respondents, it is stated that the plaintiff was working abroad and he was not examined as P.W.1 and his father was examined as P.W.1 and he was cross examined in the year 2011 and the petition to recall was filed. Since the plaintiff is now available, the plaintiff should be examined as a witness and hence, the revision petition to be dismissed.

6.On the side of the petitioners, it is further stated that P.W.1 was further examined. After hearing the arguments when the case is posted for Judgment, this petition was filed. At the stage, the trial Court allowed this petition without taking into consideration that this is not a petition to recall P.W.1 but to examine new witness. The respondents cannot ask for three different prayers in a single petition for reopening the case and to scrape the evidence of P.W.1 and to examine a new witness and prayed the revision petition to be allowed.

7.It is seen that the plaintiff has not come forward to examine himself as P.W.1. The father of the plaintiff was examined as P.W.1. No petition was filed by the plaintiff to examine himself at a later stage. It is seen that no petition to scrape the evidence



of P.W.1 was filed by the plaintiff. Only at the time of reply argument, the plaintiff has come forward with this petition and the prayer is not to recall P.W.1 but to examine the plaintiff as an additional witness.

8. It is seen that no reopen petition was filed. If this petition is allowed, the defendants will be put into injustice. The plaintiff cannot come forward to give the evidence after the entire trial is over. The defendants cannot be put into facing the entire trial proceedings again. The plaintiff cannot fill up the lacuna in the case. There are discrepancies in the nature of prayer in I.A.No.708 of 2015.

9. In the above said reasons, the impugned order is liable to be set aside. The Civil Revision Petition is **allowed** by setting aside the order passed in I.A.No.708 of 2015 in O.S.No.188 of 2009 dated 24.08.2015 on the file of learned District Munsif, Oddanchathiram. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar (CS-II)

/ True Copy /

Sub Assistant Registrar (CS-)

Mrn
To

The District Munsif Court,
Oddanchathiram

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate
(SR-64837[F] dated 02/05/2019)

C.R.P.(PD)(MD)No.2125 of 2015

ES/19.06.2019/3P/3C