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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 21.02.2019

DELIVERED ON : 11.03.2019

CORAM

**THE HONOURABLE MRS. JUSTICE R. THARANI**

C.R.P. (NPD) (MD) No.490 of 2016

Appusamy (Died)

- 1.Soodamani
- 2.Sivakumar
- 3.Shanthi
- 4.Saratha
- 5.Chitra

.. Petitioners/Defendants

Vs.

Saravanan

.. Respondent/Plaintiff

**Prayer :** This Civil revision petition is filed under Article 227 of Constitution of India, to set aside the order dated 22.01.2016 passed during the course of examination of D.W.2 in O.S.No.205 of 2011 on the file of the Principal District Munsif Court, Karur.

For Petitioners

: Mr.V.Balaji

For Respondent

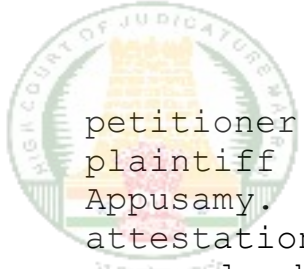
: Mr.V.Sitharanjandas

**ORDER**

Heard Mr.V.Balaji, learned counsel appearing for the petitioners and Mr.V.Sitharanjandas, learned counsel appearing for the respondent.

2.This petition has been filed against the order dated 22.01.2016 passed during the course of examination of D.W.2 in O.S.No.205 of 2011 on the file of the Principal District Munsif Court, Karur.

3.The petitioners are the defendants and the respondent is the plaintiff in the suit. The respondent filed a suit in O.S.No.205 of 2011 before the Principal District Munsif, Karur for a prayer of recovery of money. In the suit, D.W.1 was examined. When the petitioners herein requested the Court for permission to re-examine, the Court has rejected the request. Against which, the petitioners have come forward with this revision petition.



petitioner and they are the legal heirs of one Appusamy. The plaintiff filed a suit for recovery of money against that Appusamy. Appusamy filed a written statement denying the attestation, consideration and he denied the relationship of money lender and borrower. The deceased was examined as D.W.1 in chief but before his cross examination, he died and the second petitioner was examined as D.W.2. The petitioners predecessor have not left any property to be inherited by them. It is stated that there are some ambiguity regarding the evidence of D.W.1 and to clarify that ambiguity, an opportunity for the petitioners to be given to re-examine D.W.2. As per Section 138 of the Evidence Act, an opportunity for the petitioners to be given and to re-examine all the witness is to be permitted.

5.The learned counsel appearing for the petitioners relied on the Judgment passed by the Hon'ble Supreme Court in the case of **Rammi alias Rameshwar v. State of Madhya Pradesh** reported in **AIR 1999 SUPREME COURT 3544**, which reads as follows:

*"Re examination of witness-Scope- questions cannot be confined to ambiguities alone which arose in cross examination-questions can be put to obtain explanation required for any matter referred to in cross-examination"*

6.On the side of the respondent, it is stated that the suit was filed after giving pre-notice to the defendant. The lawyer notice was sent on 13.09.2010 and the petitioners predecessor sent a reply notice on 27.09.2010 and the suit was filed on 13.11.2010. The case of the original defendant is that the respondent has repaid the entire amount but the pro note was not returned to him. The petitioners filed additional written statement stating that no movable or immovable properties are left by their predecessor. Only to drag on the case, this petition was filed and the above said citation is not applicable to this case.

7.On the side of the petitioners, it is stated that in the additional written statement, it is clearly stated that the second petitioner's father did not leave any movable or immovable properties and to clarify this, all the witnesses are to be re-examined.

8.On the side of the petitioners, it is stated that D.W.2 has voluntarily deposed that himself and his father Appusamy were residing in separate houses and that when the advocate seek permission before the Court for re-examination of the witness regarding this point, the Court has rejected the request. But the petitioners have not filed any petition to recall the witness.

<https://hcservices.ecourts.gov.in/hcservices/>  
9. When the witness voluntarily deposed something, the scope of re-examination is very limited and the remedy available to the



petitioners is to approach the trial Court by filing a recall petition. Without availing that opportunity, the petitioners have come forward with this revision petition.

10. In the above circumstances, this Civil Revision Petition is dismissed. No Costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To  
The Principal District Munsif, Karur.

+1 CC to M/s.V.BALAJI, Advocate ( SR-53182[F] dated 12/03/2019 )

+1 CC to M/s.V.SITHARANJANDAS, Advocate ( SR-53244[F] dated 12/03/2019 )

MRN

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KM/ (22.03.2019) 3P 4C