

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 09.08.2019

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU**C.R.P (MD) .Nos.1681 and 1682 of 2017****and****C.M.P. (MD) .No.9271 of 2017 in C.R.P. (MD) .No.1681 of 2017**

Anthony Xavier

... Petitioner in both the petitions/
Petitioner / Plaintiff

Vs.

1.Michael Rayappan

2.Jeyamary

3.Primrose

4.Arulraja

5.Cruse Alexander

6.Rajeswari

... Respondents in both the petitions/
Respondents/Defendants

COMMON PRAYER:- Civil Revision Petitions filed under Article 227 of the Constitution of India, against the orders dated 03.01.2017, passed in I.A.Nos.490 and 491 of 2016 respectively in O.S.No.237 of 2009 by the Additional District Munsif, Valliyoor.

For petitioner in
both the petitions

: Mr.V.Meenakshisundaram

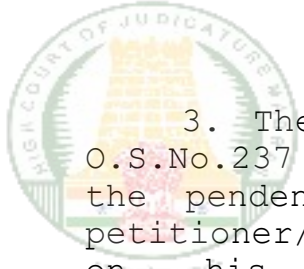
For respondents in
both the petitions

: Mr.H.Arumugam

COMMON ORDER

These Civil Revision Petitions have been filed by the petitioner challenging separate orders dated 03.01.2017 passed in I.A.Nos.490 and 491 of 2016 in O.S.No.237 of 2009, whereby and whereunder the Court below has dismissed the petitions filed by the petitioner for reopening the case and for recalling the official witness respectively.

2. As the issue involved in both the revision petitions are interrelated to each other and they have arisen out of one suit, both the petitions are heard together and are being disposed of by way of this common order.



3. The petitioner herein as plaintiff has filed the suit in O.S.No.237 of 2009 for declaration and permanent injunction. During the pendency of the trial, the Court below has permitted the petitioner/plaintiff to examine Tahsildar, Radhapuram as 4th witness on his side. Even after several adjournments, the petitioner/plaintiff did not appear before the Court below and take any steps to examine the 4th defendant. Hence, the Court below has closed witness on the side of the petitioner/plaintiff. During the pendency of the suit for arguments, the petitioner/plaintiff has filed I.A.Nos.490 and 491 of 2016 for reopening the case and recalling the official witness respectively. The Court below, after hearing both sides, has dismissed both the petitions. Aggrieved by the same, the petitioner/plaintiff has filed these revision petitions.

4. Heard the learned counsel appearing for both sides and perused the records carefully.

5. The main ground on which the Court below has dismissed both the petitions is that though the suit was adjourned for several times ie., on 13.06.2019, 17.6.2016, 21.06.2019 and 28.06.2019 for taking steps to examine the official witness as PW4, the petitioner/plaintiff did not appear before the Court below and therefore, the evidence was closed and that the petitioner/plaintiff, by suppressing the fact, has filed these petitions.

6. Admittedly, it is not in dispute that there was a State wide boycott during the period when the suit was stated to be adjourned on several occasions. More over, the petitioner/plaintiff does not want to introduce a new witness and fill up the lacuna. The petitioner/plaintiff wanted to recall the official witness to mark some documents, which was already permitted by the trial Court. Hence, this Court is of the view that the petitioner/plaintiff may be provided with one more opportunity to examine the official witness.

7. At this juncture, the learned counsel appearing for both sides submitted that considering the year of the suit, this Court may direct the Court below to dispose of the suit within a time frame.

8. In view of the above, both the revision petitions are allowed and the impugned orders passed by the Court below are set aside and I.A.Nos.490 of 491 of 2016 are allowed. The Court below is directed to fix a date for examination of the official witness and provide sufficient opportunity to both the parties. Considering the year of the suit, the Court below is directed to conduct the case on day to day basis, without providing long adjournments and dispose of the suit within a period of six months from the date of receipt of a copy of this judgment. Both the parties are directed



to cooperate with the Court below for early disposal of the suit. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-III)

Sub Assistant Registrar (CS)

To

1. The Additional District Munsif,
Valliyoor.

+1 CC to Mr.D.NALLATHAMBI, Advocate (SR-81036[F] dated 09/08/2019)
+1 CC to Mr.H.ARUMUGAM, Advocate (SR-81320[F] dated 13/08/2019)

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