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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.04.2019

CORAM:

THE HONOURABLE **MR. JUSTICE S.S.SUNDAR**

C.R.P (MD) (PD) No.1404 of 2013

and

M.P. (MD) No.1 of 2013

Mariya Paulraj

... Petitioner

Vs.

John Peter

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to call for the records in connection with order dated 23.07.2013 passed by the learned Principal District Munsif Court, Srivilliputhur, in I.A.No.967 of 2013 in O.S.No.619 of 2009 and quash the same.

For Petitioner

: Mr.R.Alagumani

For Respondent

: Mr.D.Senthil

ORDER

This Civil Revision Petition is directed against the order passed by the learned Principal District Munsif, Srivilliputhur, in I.A.No.967 of 2013 in O.S.No.619 of 2009, dismissing the petition filed by the plaintiff / revision petitioner to recall DW-1 for further cross examination.

2.The revision petitioner filed the suit in O.S.No.619 of 2009 before the Principal District Munsif Court, Srivilliputhur, for recovery of a sum of Rs.40,000/- with interest. The suit for recovery of money is based on a pronote alleged to have been executed by the defendant / respondent in favour of the plaintiff / petitioner on 31.08.2008. The suit was contested by the defendant denying the execution of pronote and passing of consideration.

3.It is the specific case of the respondent that the pronote has been fabricated by using the signature of the defendant in blank pronote. It is not in dispute that DW-1 was further cross examined by the present Counsel, after the death of previous Counsel for the revision petitioner. The petition to recall DW-1 for further cross examination was filed in I.A.No.967 of 2013. The petition was dismissed by the trial Court on the ground that the defendant's side witness, DW-1 was further cross examined by the plaintiff's side, and that therefore, a further opportunity was also given to the present Counsel to cross examine DW-1.



4. Stating that the plaintiff's new Counsel has also been permitted to cross examine DW-1 earlier, the petition for recalling DW-1 was dismissed. Aggrieved by the same, the plaintiff has preferred the present revision petition.

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5. It is admitted that the defendant himself has filed earlier an application in I.A.No.948 of 2013 for reception of certain documents and the said documents have been permitted to be marked by allowing I.A.No.948 of 2013. This order was passed on 18.07.2013 by the trial Court. It was only, thereafter, the application in I.A.No.967 of 2013 has been filed to recall DW-1 for further cross examination.

6. Though the affidavit filed in support of the application in I.A.No.967 of 2013, does not contain sufficient reasons, the plaintiff should be given an opportunity to cross examine DW-1, at least, with regard to the additional document, that was sought to be marked through DW-1. In the said circumstances, this Court is unable to sustain the order of the trial Court in I.A.No.967 of 2013 in O.S.No.619 of 2009. Hence, this Civil Revision Petition is allowed and the order passed in I.A.No.967 of 2013 in O.S.No.619 of 2009, dated 23.07.2013 is set aside. The petition in I.A.No.967 of 2013 in O.S.No.619 of 2009, dated 23.07.2013 is allowed. However, the further cross examination of DW-1 or any other witness should be confined to the additional documents marked pursuant to the order in I.A.No.948 of 2013. No order as to costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

cmr

To
The Principal District Munsif, Srivilliputhur.

+1CC TO MR.D.SENTHIL, Advocate Sr. No. 58421

C.R.P (MD) (PD) No.1404 of 2013
01.04.2019

TR (12.04.2019) 2P 3C