

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2020

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P (PD) No.1699 of 2020
and C.M.P.No.10641 of 2020

1. Vidhya
2. Brindha

... Petitioners

Vs.

1. Selvarani
2. Arumugam

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed by the learned Subordinate Judge, Nagapattinam, in I.A.No.1 of 2019 in O.S.No.101 of 2015 dated 20.02.2020.

For Petitioners : Mr. S.Parthasarathy

ORDER

The petitioners filed a petition to examine the first defendant/first respondent as a Court witness, who was set ex parte before the trial court. The trial Court has refused to accept the contention and dismissed the petition. Aggrieved over the same, the present Civil Revision Petition has been preferred.

2. In the considered opinion of this Court, it is for the plaintiffs to prove their case on their own strength by letting in oral and documentary evidence. But, they did not rely on the pitfalls or lapses of the other side. When a defendant was set ex-parte, the plaintiffs cannot expect the ex-parte to come and let in evidence on their side. The Court will draw adverse inference against that party, who was set ex-parte but it will not compel that party to let in evidence as a Court witness.

3. The trial Court has rightly found that the first defendant, who was set ex parte cannot be examined as a Court witness and the plaintiffs have to prove their case on their own merits. I do not find any discrepancy in the order passed by the trial Court.

4. At this juncture, the learned counsel appearing for the petitioners submits that he wants to examine the witness on the side of the plaintiffs. If the witness is willing and appear before the Court as a witness on the side of the plaintiffs, it is open to the petitioners to take appropriate action

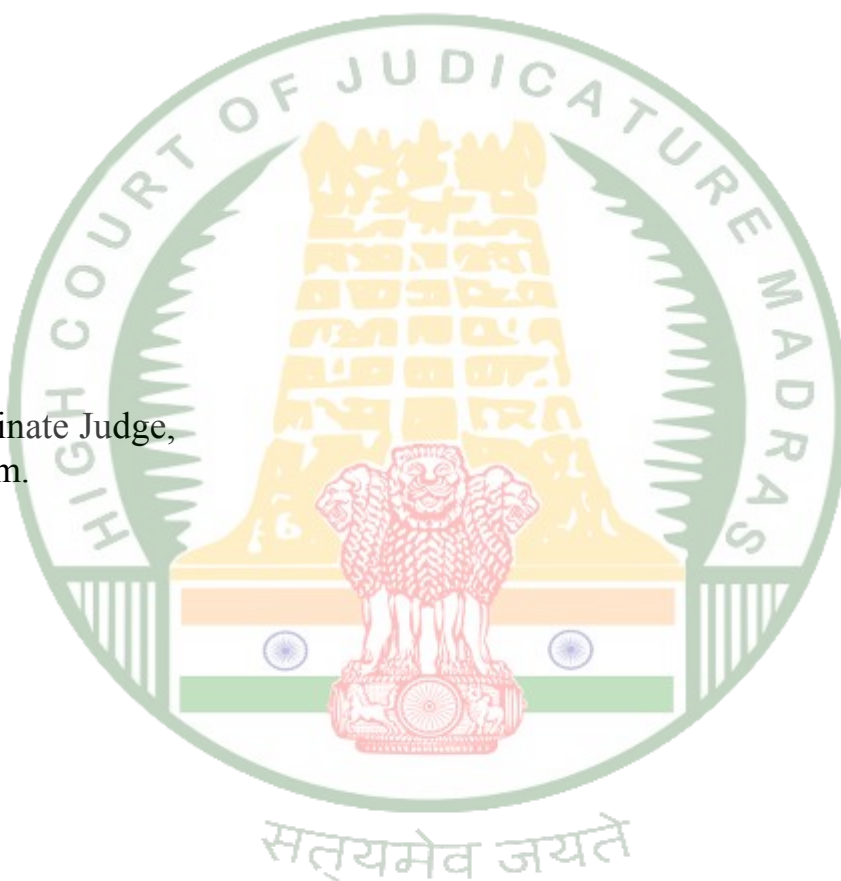
before the Court and examine their witnesses. As such, the present petition is not maintainable and accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

28.09.2020

ms/asi

To

The Subordinate Judge,
Nagapattinam.



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M.GOVINDARAJ, J.

ms/asi



C.R.P.(PD) No.1699 of 2020

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