

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (NPD) No.2974 of 2018
and CMP No.17347 of 2018

Marimuthu

..Petitioner

Vs.

1. Kanniyathal
2. Govindasamy
3. Muthusamy
4. Subbathal
5. C.S.Natarajan
6. Velusamy
7. Subramaniam
8. Ramalingam

... Respondents

Prayer: The Civil Revision petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 20.06.2018 made in I.A.No.766 of 2017 in O.S.No.531 of 2007 on the file of the learned District Munsif, Dharapuram.

For Petitioner : Mr.N.Ponraj

For Respondents : Mr.S.Saravanan

ORDER

This revision is at the instance of the 2nd defendant in O.S.No.527 of 2007. Challenge is to an order made in I.A. No.766 of 2017 in and by which, the learned trial Judge had allowed the reopening of the evidence of Dws 1 and 2 for cross examination by the plaintiff.

2. The evidence of Dws1 and 2 was closed after the cross examination by one of the plaintiffs. The other plaintiff did not cross examine. Since the evidence was closed without an opportunity to cross examine, the plaintiff in O.S.No.527 of 2007 filed I.A.Nos.765 and 766 of 2017 seeking reopening of the evidence of the defendants and to recall of Dws 1 and 2 to enable cross examination.

3. This was opposed on the ground that the petitioner namely the plaintiff in O.S.No.527 of 2007 has not cross examined the witnesses wantonly only with a view to delay the suit. Therefore, she is not entitled to an opportunity.

4. The trial Court though found that the plaintiff guilty of certain

latches, allowed the application on the ground that she should be given an opportunity for cross examining the witnesses. The trial Court also took note of the fact that right to cross examine the witness cannot be denied only on the sole ground of delay. On the said findings, the trial Court exercised its discretion and allowed the applications. Aggrieved, the 2nd defendant has come up with this revision.

5. I have heard Mr.N.Ponraj, learned counsel appearing for the petitioner and Mr.S.Saravanan, learned counsel appearing for the 1st respondent. The other respondents are not served. Considering the nature of the revision, I do not think we should await the service of notice on the other respondents.

6. The right to cross examination is a very valuable right and the Court must always endeavour to protect the said right. If a party fails to cross examine the witness and that failure results in closing of the evidence and if that party applies within a reasonable time for reopening and recalling of the witness, the Court has to exercise its discretion in favour of such

party and only in cases where there is total negligence or callous indifference on the part of the parties in conducting trial, could the Court reject such a request. The trial Court had exercised its discretion in favour of the petitioner and allowed the application and I do not think such exercise of discretion can be interfered with, particularly exercise of the power under Article 227 of the Constitution of India. The revision therefore fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

7. The counsel for the petitioner would submit that DW1 is unwell and is bed ridden. The trial Court shall make necessary arrangements for cross examination of DW1 by appointing a Commissioner if it is deemed necessary.

24.11.2020

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Index: Yes/No

Speaking order / Non speaking order

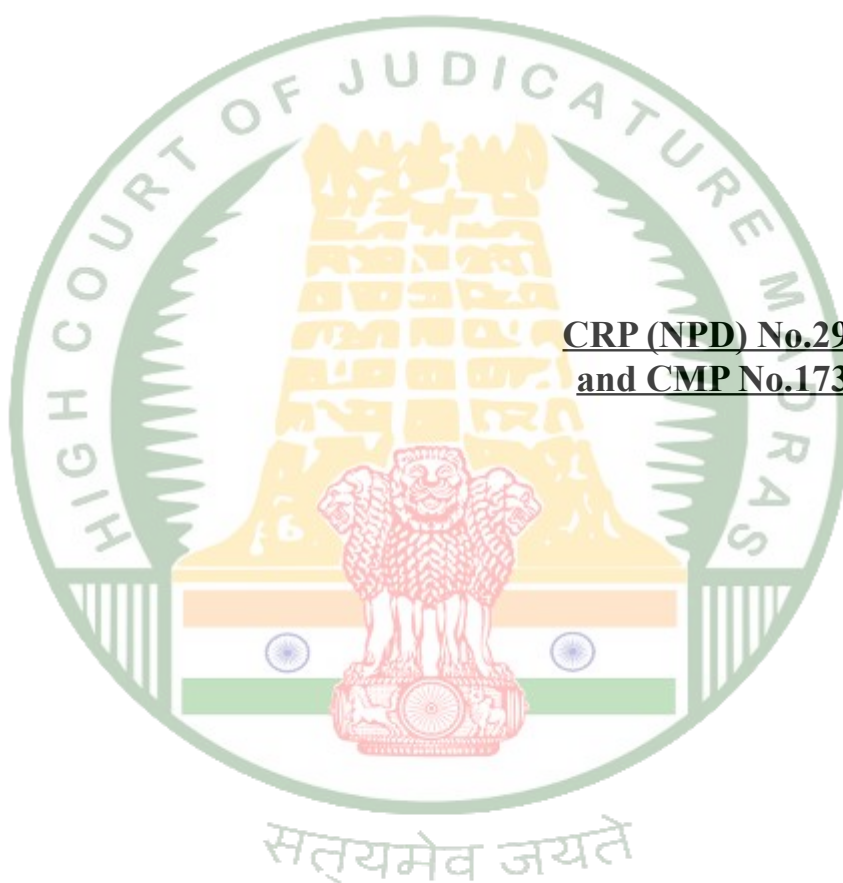
To:

The District Munsif, Dharapuram

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R.SUBRAMANIAN, J.
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