

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2020

CORAM

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No.3244 of 2018
and C.M.P.No.18470 of 2018

Rajendran (deceased)

S/o.Subramaniam

1. Santhanam

S/o.Dhathu Gounder,

2. Selvam

S/o.Dhathu Gounder,

3. Shanmugam

S/o.Dhathu Gounder,

4. Jagadeesan

S/o.Dhathu Gounder,

5. Ravi

S/o.Periya Paiyan @ Mannathan

6. Patchiappan

S/o.Periya Paiyan @ Mannathan

7. Ramasamy

S/o.Periya Paiyan @ Mannathan

8. Kumar

S/o.Panaimarathan

9. Goa

W/o.late Rajendran

10. Raja

S/o.late Rajendran

11. Saravanan

S/o.late Rajendran

... Petitioners

Vs.

Thangaraj

सत्यमेव जयते

... Respondent

Prayer: Civil Revision Petition is filed under Section 227 of the Constitution of India, to set aside the fair and decreetal order dated 31.08.2018 passed in I.A.No.305/2018 in O.S.No.126/2010 by the learned I-Additional District Munsif, Bhavani.

For Petitioners : Mr.V.Vijayakumar

For Respondent : Mr.S.Lakshmanasamy

ORDER

This matter is taken up for hearing through Video-Conferencing.

2. The defendant in O.S.No.126 of 2010 is on revision, challenging the order rejecting his application in I.A.No.305 of 2018, seeking to recall PW-1 for further cross-examination.

3. It is stated that PW-1 was examined in chief on 09.07.2018 and subsequently cross-examined. Before examination of the defence witnesses, the defendants filed this application seeking to recall PW-1 for further cross-examination. The claim made was that certain documents were omitted to be marked and also some important questions were left out. The learned Trial Judge dismissed the application, concluding that the cross-examination already done is extensive enough and no further evidence is required. On the said conclusion, the learned Trial Judge dismissed the application.

4. Heard Mr.V.Vijayakumar, learned counsel in support of the revision and Mr.S.Lakshmanasamy, learned counsel against the revision.

5. I am unable to sustain the order of the Trial Court. There is no delay in filing the application. Immediately after completion of the cross-examination, the defendant has come out with this application seeking to recall PW-1 for further cross-examination. As rightly pointed out by learned counsel that the reasons or questions that are to be put cannot be set out in the affidavit as the element of surprise would be lost. An application to recall a witness should be considered more liberally in a case where the recall application is filed even before examination of other witness and therefore, the trial Court is not right in adopting very strict approach and dismissing the application. However, to compensate the inconvenience caused to the plaintiff, I am of the opinion that the application should be allowed on certain terms regarding costs.

6. Therefore, the order of the trial court made in I.A.No.305 of 2018 is set aside and this Civil Revision Petition will stand allowed on condition that the petitioner pays a sum of Rs.5,000/- (Rupees Five Thousand only) as costs to the learned counsel for the respondent appearing before the Trial Court on or before 14.12.2020, failing which, the revision will stand dismissed, without any further reference to this Court. On production of the receipt of the payment of the costs, the Trial Court will recall PW-1 to enable the defendant to cross-

examine him. Considering the fact that the suit is of the year 2010, the Trial Court is directed to dispose of the suit within a period of six (6) months from the date of resumption of physical hearing in the Courts at Erode. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

kmi

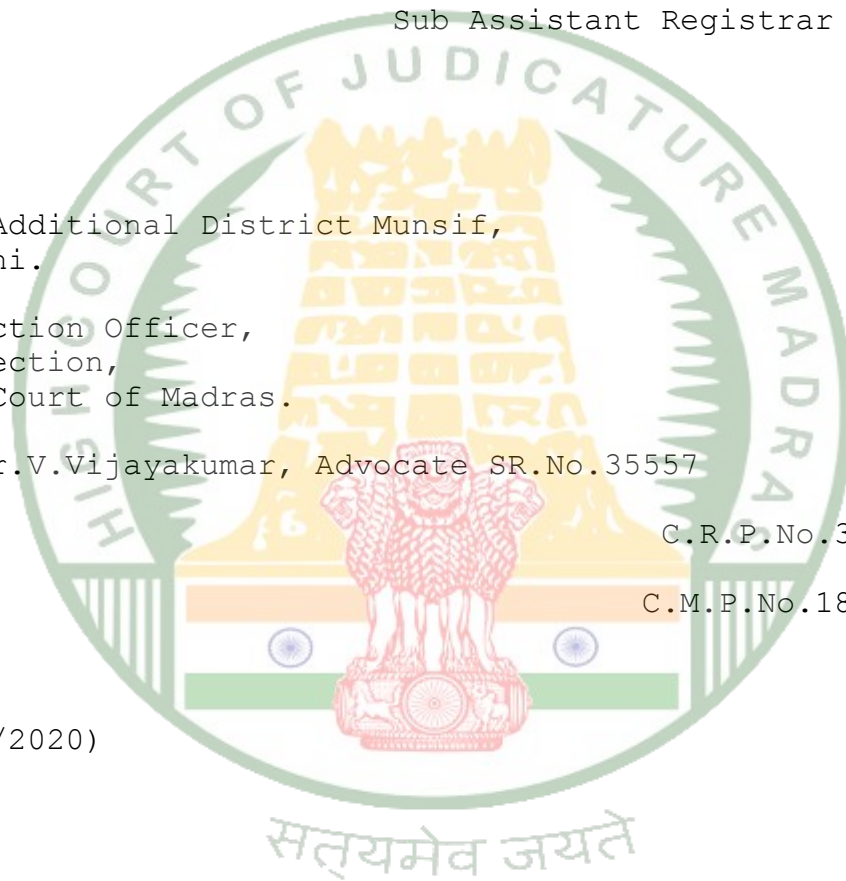
To

1. The I-Additional District Munsif,
Bhavani.
2. The Section Officer,
V.R.Section,
High Court of Madras.

+1cc to Mr.V.Vijayakumar, Advocate SR.No.35557

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UM (CO)
GMY (20/11/2020)



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