

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).Nos.3594 & 3595 of 2018
and
C.M.P.No.20121 of 2018

L.Saraswathy ...Petitioner in both CRPs.

Vs.

G.Saraswathy ...Respondent in both CRPs.

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the common fair and final orders in I.A.Nos.153 and 154 of 2018 respectively, in O.S.No.347 of 2015 on the file of the V Additional District Judge, Coimbatore dated 06.08.218.

For Petitioner in : Mr.J.Prithivi
both CRPs. for Mr.Kaithamalai Kumaran

For Respondent in : Mr.Dillikumar
both CRPs. for Mr.G.Rajan

COMMON ORDER

These Civil Revision Petitions have been filed to set aside the common fair and final orders dated 06.08.218 passed in I.A.Nos.153 and 154 of 2018 respectively, in O.S.No.347 of 2015 on the file of the V Additional District Judge, Coimbatore.

2. The plaintiff in O.S.No.347 of 2015 has come up with these Civil Revision Petitions challenging the orders in I.A.Nos.153 and 154 of 2018, which were filed for re-opening the evidence of the plaintiff and recalling of PW1 for further cross examination. The suit is filed based on the promissory note said to have been executed by the defendant's son Sugumar, who is no more. The defendant is resisting the suit contending that the promissory note was not executed by Sugumar and he had no occasion to borrow money from the plaintiff. PW1 was examined some time in March-2017 and he was also cross examined. Thereafter, it is seen that, PW2 was examined in September-2017 and PW3 was examined in December-2017. The defendant's evidence is yet to commence.

3. At this stage, the respondent herein came up with I.A.Nos.153 and 154 of 2018 seeking to re-open the evidence of the plaintiff and re-call PW1 for further cross examination. In the affidavit filed in support of the application, it is alleged that the defendant, who is an illiterate widow had omitted to instruct her counsel properly to cross examine PW1, as a result of which, certain important questions have been left out. This rendered the cross examination ineffective. Therefore, the defendant sought for re-opening of the evidence of PW1 for further cross examination. This application was opposed on the ground that PW1 was cross examined in detail by the learned counsel for the defendant and it is only an attempt to fill up the lacuna in the evidence. The fact that P.Ws.2 and 3 were examined was also cited as a reason for seeking rejection of the request.

4. The learned Trial Judge upon consideration of the facts and circumstances of the case concluded that no prejudice would be caused to the plaintiff by affording a chance to the defendant to cross examine PW1. The learned Trial Judge also took note of the delay in examination of P.Ws.2

and 3. The learned Trial Judge had exercised his discretion in allowing the application. The said exercise of discretion is the subject matter of challenge in these Civil Revision Petitions. I do not find any grounds to interfere with the order of the Trial Court.

5. As stated above, the suit is based on a promissory note alleged to have been executed by the son of the defendant. Admittedly, the son of the defendant is no more. The suit is laid against the defendant claiming that she has inherited certain property from her son. However, the defence is one of a complete denial of an execution of the promissory note.

6. In such circumstances, I am of the opinion that the Trial Court cannot be faulted for having afforded an opportunity for further cross examination of PW1. The claim that the attempt is only to fill up the lacuna has no basis, because the defence evidence is yet to be let in. I therefore do not see any reason to interfere with the order of the Trial Court and hence, these Civil Revision Petitions are dismissed. No costs. Consequently,

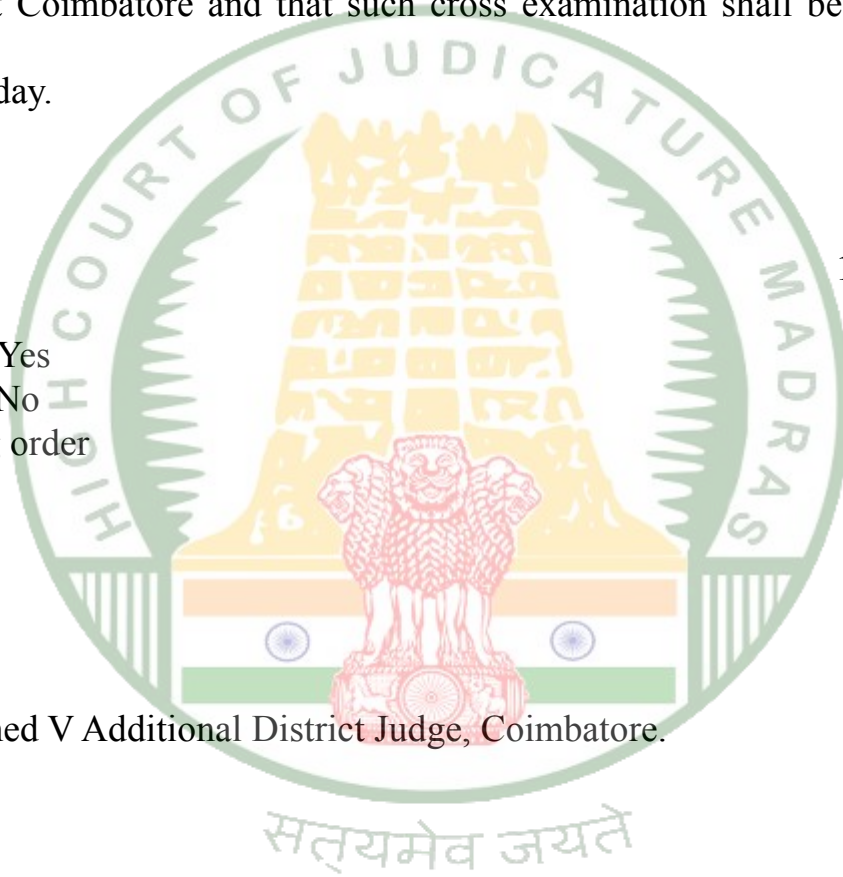
connected Miscellaneous Petition is also closed. The evidence of the plaintiff is re-opened and PW1 is recalled. PW1 shall be cross examined within 10 days from the date of commencement of physical hearings in the Courts at Coimbatore and that such cross examination shall be completed within a day.

13-08-2020

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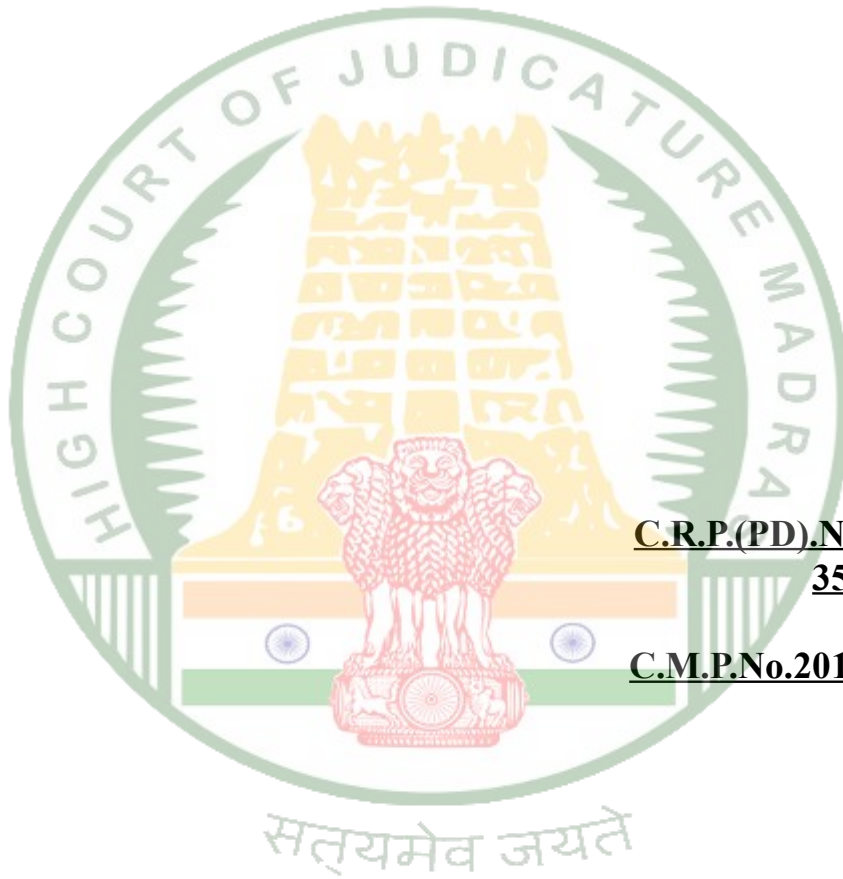
The learned V Additional District Judge, Coimbatore.



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R.SUBRAMANIAN, J.
dna



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