

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2021

CORAM :

THE HON'BLE MR.JUSTICE **C.V. KARTHIKEYAN**

C.R.P.(PD) Nos.140 and 141 of 2021

The Manager,
M/s.Ashok Leyland Ltd
Technical Centre, Vellivoyalchavadi,
Manali New Town,
Ponneri Taluk,
Chennai 600 103.

... Petitioner

Vs.

G.Elumalai

... Respondent

Prayer: Revision Petition filed under Article 227 of Constitution of India against the fair and decretal order dated 02.12.2020 passed by District Munsif, Ponneri, dismissing I.A.Nos.1 and 2 of 2020 in O.S.No.7 of 2016.

For Petitioner : Mr.Velmurugan
for M/s.R and P. Partners

For Respondents : Mr.D.Gopinath

COMMON ORDER

The defendant in O.S.No.7 of 2016 is the revision petitioner herein. The suit in O.S.No.7 of 2016 had proceeded with the recording of evidence, wherein P.W.1 and P.W.2 have been examined and cross examined and the examination of D.W1 is also over. After his cross examination, the suit is now posted for the examination of D.W.2. It

must be mentioned that the said suit had been filed by the plaintiff, seeking a judgment and decree to declare the plaintiff as the absolute owner of the suit property and for a further direction to direct the defendant to hand over possession of the vacant site of the property after removing the superstructure, if any, in the suit property, and also for costs of the suit. At the stage when further evidence for the defendant had to be adduced, the defendant had filed interlocutory applications in I.A.Nos.1 and 2 of 2020 seeking permission to reopen the evidence on the side of the plaintiff and to recall P.W.1 for further cross-examination. That application had been filed under Order XVIII Rule 17 read with Section 151 of the Code of Civil Procedure.

2. The learned District Munsif, Ponneri, held that the said provision would apply only if the Presiding Officer of the court wanted some clarification and therefore, it is not open to either one of the two parties to resort to such a provision. It was also observed by learned District Munsif that the applications appear to have been filed with intention to drag on the proceedings, particularly when the oral evidence on the side of the plaintiff had already been completed by examination and cross-examination. Thus, there was no necessity for

recalling P.W.1 once again.

3. Heard the learned counsels for the petitioner and also for the respondent.

4. Mr.Gopinathan, learned counsel for the respondent pointed out the futility in re-examining P.W1 and questioning him, particularly because, further cross-examination would, as was stated during the course of earlier cross examination, be to find out whether the suit property was part of the lay out land or not and therefore stated that it was an issue beyond the scope of the suit and therefore, the learned counsel states that such cross-examination would not be required and would not serve any purpose at all.

5. On the other hand, Mr.Velmurugan, learned counsel for the revision petitioner stated that there was no need to drag on the proceedings. Only a few questions, with reference to whether permission was obtained or not, in addition to the land for the lay out, have to be put to P.W.1. The learned counsel also stated that no new document would be introduced during the cross examination. The

learned counsel further stated that if the court fixes any particular date, the cross examination will be conducted only on that particular date and there was no intention of dragging on the matter.

6. Having heard the counsels, since the trial Court has to determine the facts, some latitude has to be given during the course of the cross examination of witnesses during the pendency of the suit. Even during the recording of evidence, the Trial Court may recall witnesses, if in its opinion such recalling of witnesses is necessary for proper assessment of the documents that have been filed by either of the two parties. If evidence had been obtained during the pendency of the suit, the Trial Court can permit further cross examination of P.W.1. The learned District Munsif, Ponneri, may also give permission for re-examination of the witness.

7. If, in the opinion of the District Munsif, Ponneri, the cross-examination sought for is not relevant to decide the issue in the suit, then such cross examination may be rejected while analysing evidence. Thereafter, the defendant may be called upon to lead evidence. The District Munsif, Ponneri, may endeavour to dispose of

the suit on or before 31.08.2021 by proceeding with the trial on a day-to-day basis, if needed, giving an adjournment of three working days in between any two adjournments and let not more than two adjournments be granted for the very same reason. The Trial Court shall proceed with the matter and complete the trial as indicated above.

8. With the said observation, the Civil Revision Petition is allowed and there will be no order as to costs. Let the cross examination not traverse beyond the scope of finding out whether the property is within the approved lay out or not. Connected miscellaneous application is closed.

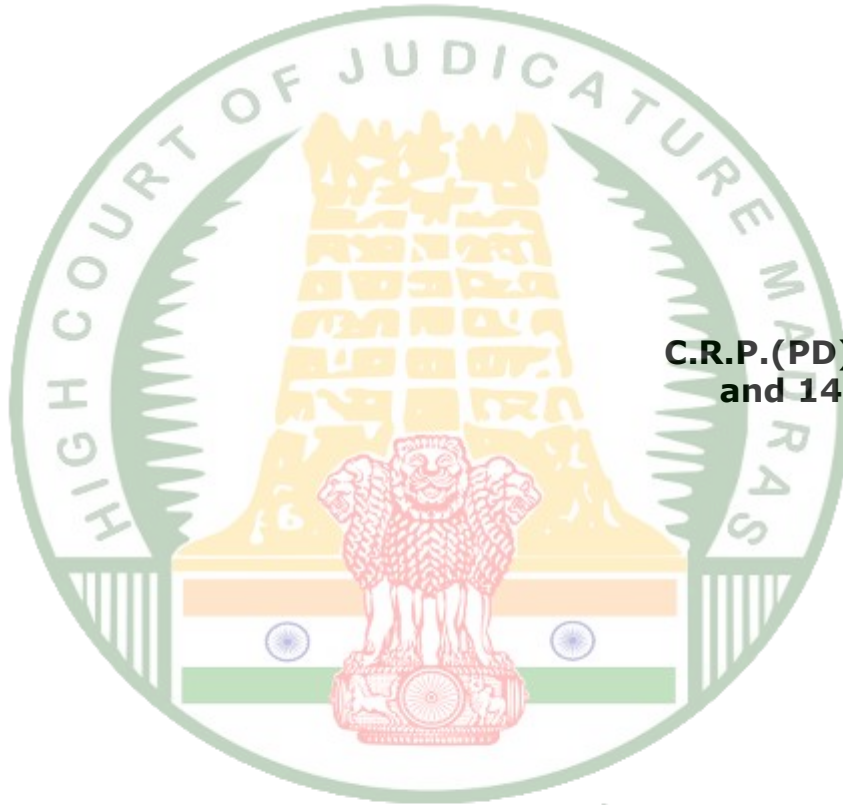
19.07.2021

Index : Yes/No
mrn

To
The District Munsif, Ponneri

C.V. KARTHIKEYAN, J.

(mrn)



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