



CRP.PD.Nos.979 & 982/2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.PD.Nos.979 & 982/2019

[Hybrid Mode]

K.Petchimuthu Gounder

.. Petitioner in
both Petitions

Vs.

Samiyathal

.. Respondent
in both Petitions

Prayer:- Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 12.02.2019 in IA.Nos.99 and 100/2019 in AS.No.197/2013 on the file of the learned District Munsif, Avinashi.

For Petitioner in both
Petitions : Mr.C.R.Prasanan

For Respondent in both
Petitions : No appearance



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COMMON ORDER

- (1) Since the issue involved in both the Revision Petitions is one and the same, both the petitions are taken up together for hearing and are disposed of by this common order.
- (2) Despite service of notice on the sole respondent through Court on 10.04.2019, the respondent neither appeared before this Court in person nor any counsel appeared on behalf of the sole respondent.
- (3) The above Civil Revision Petitions are filed by the plaintiff in the suit in OS.No.197/2013.
- (4) The suit in OS.No.197/2013 on the file of the learned District Munsif, Avinashi, was filed by the revision petitioner for permanent injunction restraining the defendants therein or their men, agents and Power of Attorneys from interfering with the peaceful possession and enjoyment of the suit property.
- (5) During the pendency of the suit, the 5th defendant/respondent herein filed a written statement. Later, the 5th defendant/respondent has filed IA.No.99/2019 to permit her to recall herself as DW1 to give additional chief examination and to



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mark documents and IA.No.100/2019 to condone the delay in marking the documents.

- (6) In IA.NO.99/2019, the documents which are sought to be marked, are not mentioned. Even in the affidavit filed in support of the said application, there is no reference to any document.
- (7) The Trial Court, despite serious objection being raised by the revision petitioner herein/plaintiff, allowed IA.No.99/2019 on the ground that the revision petitioner/plaintiff has not taken a plea that the documents which are sought to be marked are not relevant to the suit. The Trial Court also condoned the delay in filing the documents by allowing IA.No.100/2019 with cost.
- (8) When the documents were not listed by the 5th defendant either in the petition or in the affidavit filed in support of the petition before the Lower Court, the learned District Munsif, Avinashi, allowed the Interlocutory Application without even considering whether the documents are indicated either in the application or in the affidavit.
- (9) The Court cannot presume that the recalling of a witness is for the



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purpose of marking some documents which are relevant without even considering the nature of the documents that are sought to be marked.

- (10) It is to be noted that in the present case, the trial commenced long back and that the suit was posted for arguments. It was at that stage, IA.No.99/2019 was filed along with the condone delay application, without the documents being indicated in the petition.
- (11) Therefore this Court is unable to sustain the order passed by the Lower Court.
- (12) In the result, the Civil Revision Petitions are **allowed** and the order dated 12.02.2019 made in IA.Nos.99/2019 and 100/2019 in OS.No.197/2013 passed by the learned District Munsif, Avinashi, are **set aside**.
- (13) However, it is open to the respondent/5th defendant to file a petition within a period of two weeks from the date of receipt of a copy of this order indicating the documents that are to be marked by recalling herself or any one as witness. The Lower Court may consider the application afresh on merits after hearing the revision



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petitioner/plaintiff and considering the relevancy of the documents.

No costs. Consequently, connected miscellaneous petition is closed.

09.12.2021

AP

Internet : Yes

To

The District Munsif, Avinashi.



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S.S.SUNDAR, J.,

AP

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