

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2021

C O R A M

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

C.R.P.(PD)Nos.2653 & 2654 of 2018
and C.M.P.No.15823 of 2018

Ramesh,
S/o.Munusamy

....Petitioner in both C.R.Ps

Vs

Rajammal,
W/o.late Duraisamy

... Respondent in both C.R.Ps

Prayer in C.R.P.No.2653 of 2018: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, prayed to set aside the order dated 26.06.2018 made in I.A.No.509 of 2018 in O.S.No.116 of 2013 on the file of the Additional District Munsif, Vellore.

Prayer in C.R.P.No.2654 of 2018: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, prayed to set aside the order dated 26.06.2018 made in I.A.No.510 2018 in O.S.No.116 of 2013 on the file of the Additional District Munsif, Vellore.

For Petitioner : Mr.S.K.V.Sanjeev Kumar
For Respondent : No Appearance

ORDER

These Civil Revision Petitions have been filed against the order made in I.A.Nos.509 and 510 of 2018 in O.S.No.116 of 2013 dated 26.06.2018 on the file of the Additional District Munsif, Vellore.

2. I.A.No.509 of 2018 was filed to reopen the evidence of P.W.1 to P.W.3 and I.A.No.510 of 2018 was filed to recall P.W.1 to P.W.3 for the cross examination.

3. The gist of the case is that on 10.11.2016, the trial was commenced and P.W.1 was examined with Exs.A1 to A14 and the matter was adjourned for cross examination of P.W.1. In the proof affidavit, the learned counsel for respondents 2 to 7 reported no instruction and hence, the Court below ordered notice to the above defendants. The petitioner herein is the 7th defendant in the suit. Mr.G.Ravi, learned counsel undertakes to file vakalat for the petitioner/7th defendant. Despite sufficient opportunities no vakalat was filed therefore, the petitioner/7th defendant was set ex-parte on 15.03.2017. Since the petitioner/7th defendant was set ex-parte, the Court below provided opportunities for

defendants 8 and 9 to cross examine P.W.1. The defendants 8 and 9 failed to cross examine P.W.1 and therefore the cross of P.W.1 was closed on the default of defendants 8 and 9. Thereafter, the petitioner filed an application to set aside the *exparte* order and the same was allowed on 15.11.2017. Further, the petitioner filed an application in I.A.Nos.509 and 510 of 2018 for reopen and recall the evidence of P.W.1 to P.W.3 for cross examination. The Court below dismissed the same stating that those applications were filed belatedly to postpone the proceedings of the suit. Hence, the present Civil Revision Petitions have been filed.

4. The learned counsel for the petitioner submitted that the Revision Petitioner was not able to cross examine P.W.1 to P.W.3 due to the reason that the petitioner was set *exparte* by the Trial Court on 15.03.2017. The said *exparte* order was set aside on 15.11.2017. He further submitted that the Court below has merely come to the conclusion that it provided many opportunities to the petitioner and dismissed the applications filed by the petitioner. Therefore, the order of the Court below is liable to be set aside. Further time frame may also be fixed for the cross examination of P.W.1 to P.W.3 and to dispose the

suit.

5. Though notice was served to the respondent and Mr.M.Rajendiran, learned counsel has entered appearance for the respondent, there was no representation on behalf of the respondent for the last two occasion and today i.e (06.01.2021) also none appeared on behalf of the respondent.

6. Heard the learned counsel for the petitioner and perused the materials available on record.

7. Upon hearing the learned counsel for the petitioner and perusal of the records, it could be seen that the petitioner could not cross examine P.W.1 to P.W.3 since he was set exparte on 15.03.2017. Therefore, this Court is of the view that in the interest of justice, it would be appropriate to give one more opportunity to the petitioner to cross examine P.W.1 to P.W.3 to establish his case.

8. In view of the above, the order dated 26.06.2018 made in I.A.Nos.509

and 510 and 2018 on the file of the Additional District Munsif, Vellore is set aside. While passing this order, this Court directs the Trial Court to permit the petitioner to cross examine P.W.1 to P.W.3 and commence the cross within a period of one week from the date of receipt of a copy of this order and complete the cross within a period of two weeks from the date of commencement. This Court also directs the petitioner to cross examine P.W.1 to P.W.3 within a period of two weeks after the commencement of cross.

9. With the above directions, these Civil Revision Petitions are allowed. No cost. Consequently, connected miscellaneous petition is closed.

06.01.2021

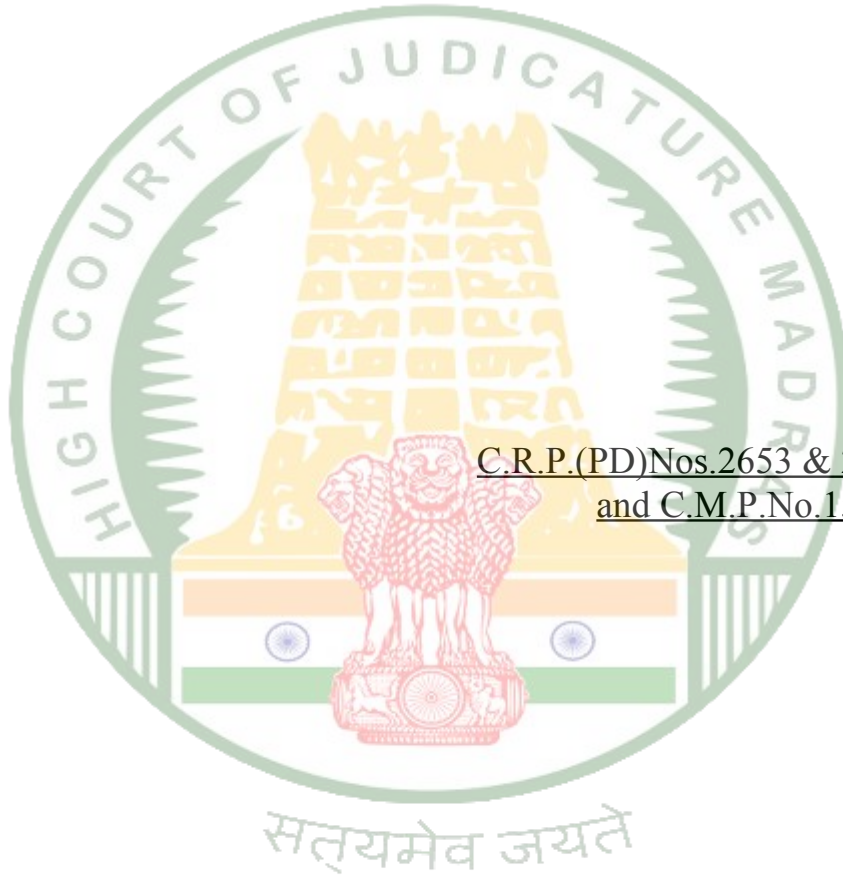
Index: Yes/No
Internet: Yes/No
Speaking order/Non-speaking order

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To:
The Additional District Munsif, Vellore.

KRISHNAN RAMASAMY,J.

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