

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P.(PD).No.957 of 2018

and

Cmp.No.5108 of 2018

1.Pongiyanna gounder

2.P.Soundaram

... Petitioners

Versus

1.The State of Tamilnadu
rep.by District Collector,
Erode District.

2.The Assistant Commissioner,
Hindu Religious & Charitable Endowment,
Gandhiji Road,
Erode.

3.The Inspector,
Shri Karichi Kumarasamy Temple,
Hindu Religious & Charitable Endowment,
Perode,
Erode Taluk, Erode District.

4.Shri Karichi Kumarasamy Temple,
Perode, rep.by its Trustee,
S.Ramasamy (died).
Chellappampalayam,
Perode Village,
Erode Taluk, Erode District.

5.Nataraj @ Thirumalaisamy

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 08.01.2018 passed in I.A.No.699 of 2017 in O.S.No.188 of 2013 on the file of the learned I-Additional District Munsif Court, Erode.

For Petitioners : Mr.N.Manokaran

For Respondents : Mr.Y.T.Aravind Gosh, (for R1 to R3)
Additional Government Pleader.

: Mr.S.Mukunth, (for R5)
for M/s.Sarvabhauman Associates.

: R4 – Died.

ORDER

This Civil Revision Petition has been filed challenging the order dated 08.01.2018 passed in I.A.No.699 of 2017 in O.S.No.188 of 2013 on the file of the learned I-Additional District Munsif Court, Erode.

2.The above I.A.No.669 of 2017 was filed by the petitioner/plaintiff before the Court below, to scrap the deposition of DW2.

3.The Court below, after hearing both sides, dismissed the application in I.A.No.669 of 2017. Aggrieved by the said order dated

08.01.2018 passed in I.A.No.699 of 2017, the revision petitioner herein has filed the present Civil Revision Petition before this Court.

4.The Court below appointed an Advocate Commissioner for the purpose of examining the 5th defendant as DW.2. Accordingly, on 22.06.2017 the fifth defendant was examined in Chief by the Advocate Commissioner, through whom Exs.B1 to B3 were marked, At that time, the revision petitioner sought time for cross-examination of DW.2, therefore, on 21.07.2017 the Advocate Commissioner visited the residence of DW.2.

5.The case of the revision petitioner is that they have visited the DW.2's residence for the purpose of cross-examination, where they found that DW.2 was not in a position to depose in cross-examination and he was not able to speak due to paralytic attack. Therefore, the revision petitioner herein filed an Interlocutory application to scrap the evidence of DW.2, however, the same was dismissed by the Court below.

6.According to the learned counsel for the revision petitioner, on 03.02.2021, this Court directed the parties to ascertain as to whether the 5th

respondent/ DW.2 is in a position to subject himself to cross-examination or not. As per the direction of this Court, it was ascertained by the learned counsel for the respondent that now, DW.2 is no more. Therefore, the learned counsel for the petitioner submitted that the DW.2's evidence has to be scraped.

7.In reply, the learned counsel appearing for the respondent submitted that the Court below had dismissed the application on the ground that the deposition of DW2 in chief cannot be scrapped as it was validly recorded. Further, the validity of deposition of DW2 in chief can be decided by the Court below during the course of trial, therefore, he contended that interference of this Court is not required. Therefore, he prayed for dismissal of the Civil Revision Petition.

8.Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents and perused the materials available on record. At this point of time, it is relevant to extract the portion of the order of the Court below hereunder:-

“According to the Petitioner the DW.2 is not able to speak due to paralysis and evidence of DW.2 is to be

scrapped. Admittedly, at the time of chief examination, the petitioner ought to have corss examined the DW2 without seeking adjournment. It is the bounden duty of the petitioner, to sought all the documents for the purpose of cross examination while chief examination was recorded with the help of the commissioner, without seeking unneeded, postponement considering the health condition of the witness to ensure speedy trial accordingly.

Further the evidence given by the parites is determined by a weighing of the totality of the facts, circumstances and presumptions operating in favour of one party as against those which may tilt the balance in favour of anothers. Such weighthment takes place at the end of trial or proceedings depends upon the facts and circumstances of the case, and in this stage, to scrap the evidence of DW.2 is totally unwarranted and also when witness is alive, to scrap evidence is wholly unjustified. All the relevancy material facts and evidences are decided at later stage and in this stage it is devoid of merits.”

9.On perusal of the order, it would show that the Court below has not come to the conclusion either to scrap or not to scrap, and the same will be decided after completion of trial, depending upon the facts and circumstances of the case.

10.Thus the necessity to weigh the correctness of evidence of DW.2 will be considered only at the relevant point of time, ie., after completion of the trial. Therefore, this Court does not find any substance in the submissions made by the learned counsel for the petitioner and no prejudice would be caused to the petitioner, if the Court below, considers the issue of scrapping of the evidence of DW2, after completion of the trial. The Court below had decided that it would take a decision, as to whether the evidence of DW.2 is to be scrapped or not, after the completion of trial. The Court below had applied its mind and passed the order under challenge. This Court does not find any infirmities in the order passed by the Court below.

11.Thus, this Court is of the opinion that present Civil Revision Petition is deserves for dismissal by confirming the order dated 08.01.2018 passed in I.A.No.699 of 2017 in O.S.No.188 of 2013 on the file of the learned I-Additional District Munsif Court, Erode. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

12.It is made clear that the relevancy of the evidence of DW.2 shall be gone into at the time of final arguments in the suit.

01.03.2021

Index: yes/no
Internet :yes/no
Speaking order :yes/no
klt

To

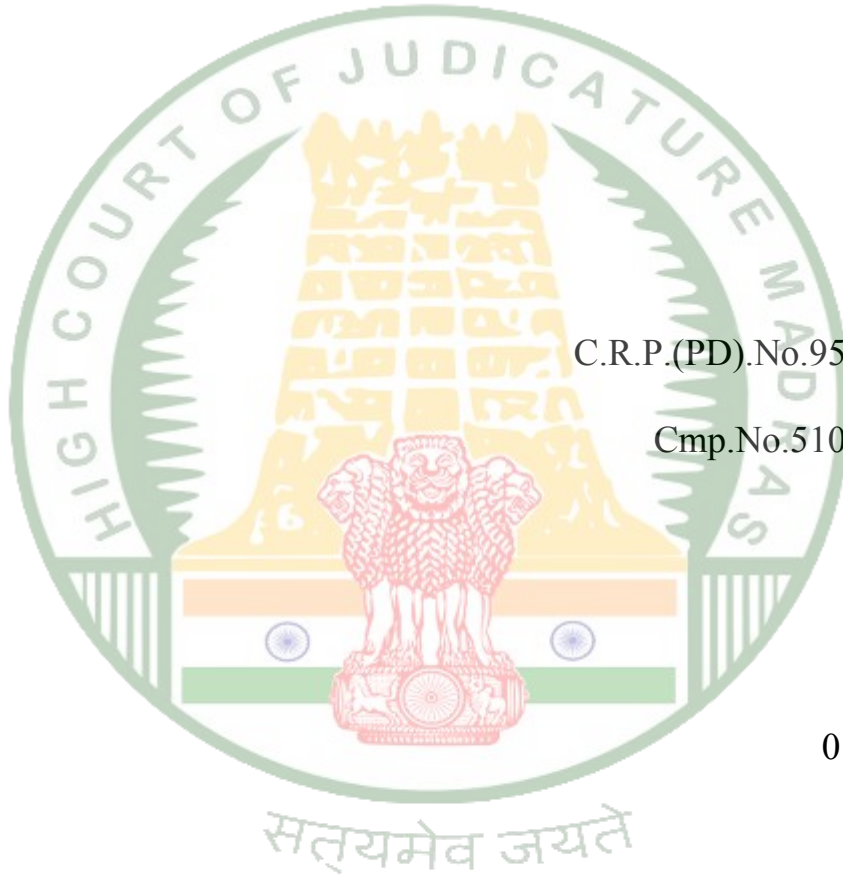
The learned I-Additional District Munsif, Erode.



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KRISHNAN RAMASAMY,J.

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