

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

**C.R.P.(P.D) Nos.1647 & 1650 of 2020
and
C.M.P.No.10146 of 2020**

1. B.Laxmi
2. S.Balasubramaniam

...Petitioners in both C.R.P.'s

Vs.

R.Varadharajan

...Respondent in both C.R.P.'s

Common Prayer :- Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the orders dated 03.08.2020, passed in I.A.Nos.2 & 3 of 2020 in O.S.No.128 of 2011, on the file of the Additional District Munsif, Namakaal.

In both the C.R.P.'s

For Petitioners : Mr.K.Bijai Sundar

For Respondent : Mr.S.Saravana Kumar

COMMON ORDER

These Civil Revision Petitions are filed to set aside the orders dated 03.08.2020, passed in I.A.Nos.2 & 3 of 2020 in O.S.No.128 of 2011, on the file of the Additional District Munsif, Namakaal.

2. I.A.Nos.2 & 3 of 2020 were filed for reopening the case of the respondent/plaintiff and for recalling the PW1 for further cross examination. The affidavit filed in support of these applications show that the respondent/plaintiff filed a proof affidavit on 14.07.2014. Subsequently, he filed another proof affidavit on 04.01.2020, inadvertently and he was cross examined by the petitioners on the basis of the proof affidavit filed on 04.01.2020. This mistake came to be known to him only at the time of arguments. An application in I.A.No.1 of 2020 in O.S.No.128 of 2011 was filed by the respondent for scrapping the proof affidavit filed on 14.07.2014, and accordingly, that affidavit was ordered to be scrapped.

3. The contention of the respondent is that some of the facts which have been said in the proof affidavit dated 14.07.2014, are omitted in the proof affidavit filed on 04.01.2020. In the said circumstances, the respondent must be permitted to recall and examine with reference to the facts which have been omitted in the proof affidavit dated 04.01.2020. This petition was contested by the petitioners. The learned Additional District Munsif, Namakaal, on considering the rival submissions found that the recall of PW1 for the purpose of aforesaid examination is necessary for the purpose of proving the

case of the respondent and allowed the petitions in I.A.Nos.2 & 3 of 2020 on 03.08.2020.

4. Against the said order, the present Civil Revision Petitions are preferred.

5. The learned counsel for the petitioners submitted that allowing the petition to reopen the case of the respondent/plaintiff and recall him for the purpose of further examination would amount to *de-nova* trial. In case, the respondent is examined, the petitioners have to be examined for giving rebuttal evidence. It would further protract the proceedings. The case is pending for arguments. This petition was filed at the time, when the case is posted for arguments. It is nothing but an exercise to protract the proceedings. Therefore, the learned counsel for the petitioners prayed for setting aside the order dated 03.08.2020, in I.A.Nos.2 & 3 of 2020 in O.S.No.128 of 2011, passed by the Learned Additional District Munsif, Namakal.

6. The learned counsel for the respondent submitted that the necessity for reopening the respondent's evidence and recalling PW1 for further examination has arisen, in view of the confusion caused in filing of two proof affidavits. In the proof affidavit filed on 04.01.2020, some important aspects have been omitted by the respondent. Those aspects are necessary for the purpose of proving the case. Unless, he is given an opportunity, he may not be in a position to prove his case. Therefore, he prayed for sustaining the order dated 03.08.2020, passed in I.A.Nos.2 & 3 of 2020 in O.S.No.128 of 2011, on the file of the Additional District Munsif, Namakaal.

7. Considered the rival submissions and perused the records. The suit in O.S.No.128 of 2020 was filed for the relief of declaration of boundary, and for consequential injunction. As narrated above, the respondent filed two proof affidavits, one on 14.07.2014 and the other on 04.01.2020. The proof affidavit filed on 14.07.2014 was scrapped. It is the contention of the respondent that certain important facts which had been stated in the earlier proof affidavit were omitted in the subsequent proof affidavit.

Therefore, the respondent must be given an opportunity to put forth his case with the help of the proof affidavit filed on 04.01.2020. Considering this specific request, though the examination of the witnesses is over and the case is pending for argument, this court is of the considered view, that the request of the respondent may be entertained for the main reason that the parties must be given necessary opportunity before the Trial Court. If that opportunity is denied, it would neither help the parties nor the court to render substantial justice. In this view of the matter, this court does not want to interfere with the order dated 03.08.2020, in I.A.Nos.2 & 3 of 2020 in O.S.No.128 of 2011, passed by the Learned Additional District Munsif, Namakal and accordingly confirms the said order.

8. However, if PW1 is recalled and further examined, necessary opportunity must be given to the petitioners to put forth their case, if the petitioners deems it fit.

9. After recording the evidence, the learned Additional District Munsif, Namakal, is directed to dispose of the suit in O.S.No.128 of 2011,

on merits and in accordance with law, as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order.

10. Accordingly, the Civil Revision Petitions are disposed of. No costs. Consequently, connected miscellaneous petition is closed.

ep/Jer

08.09.2021

Index:Yes/No
Internet:Yes/No
Speaking Order: Yes/No

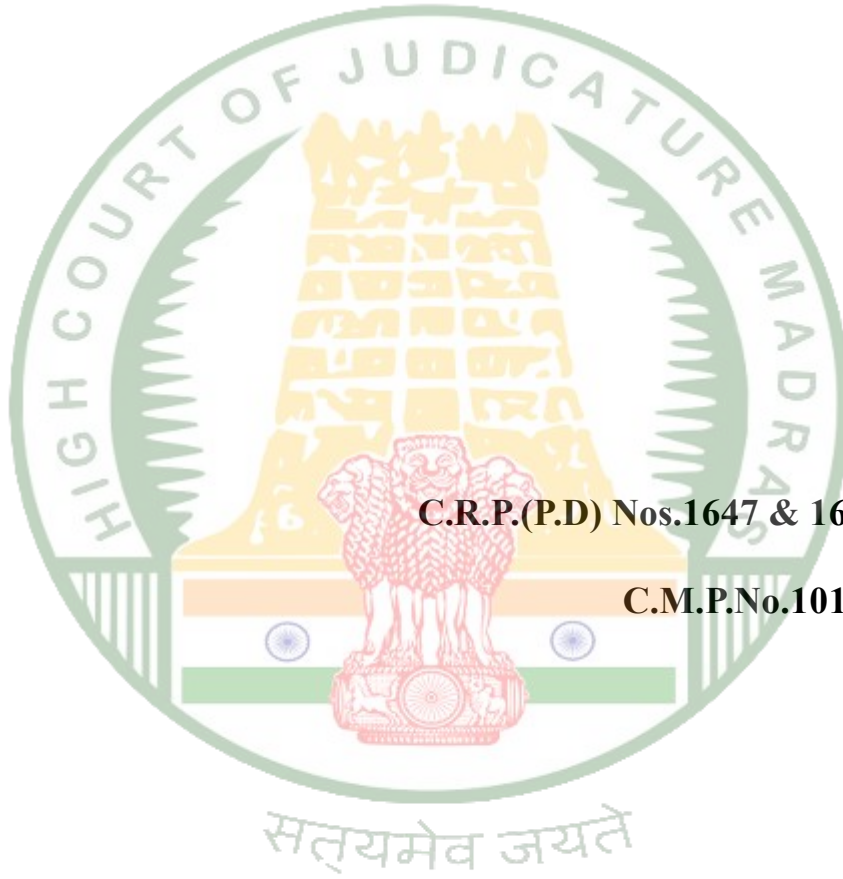
To

1. The Additional District Munsif,
Namakaal.
2. The Section Officer,
VR Section,
High Court of Madras.

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G.CHANDRASEKHARAN.J,

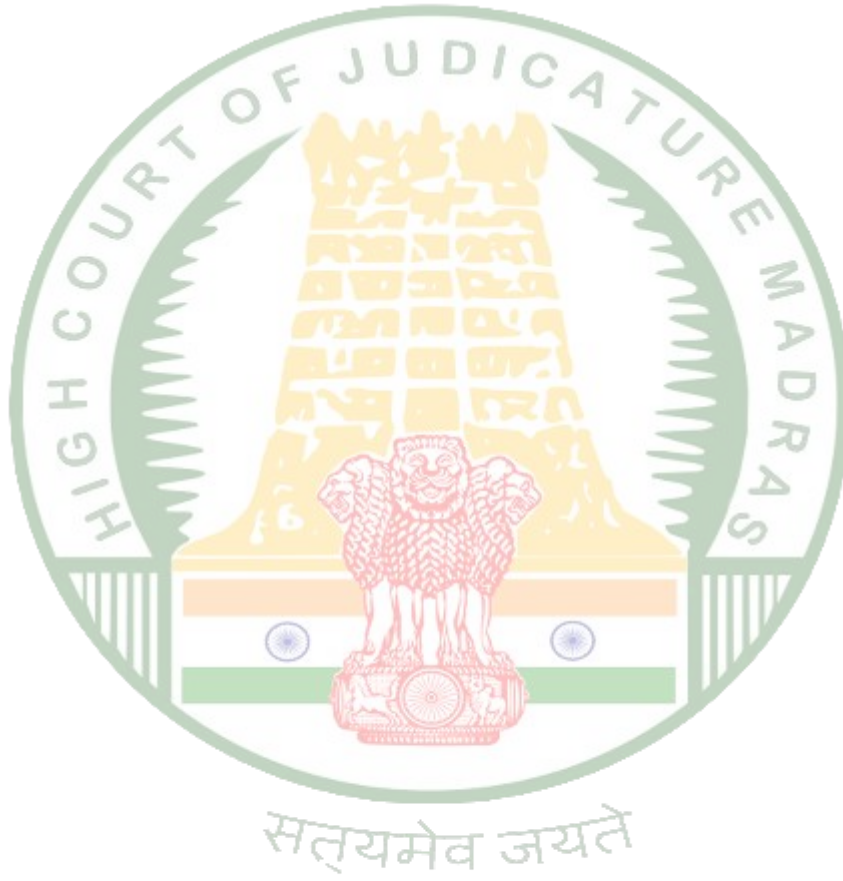
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