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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2021

CORAM:

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.Nos.1780 & 1781 of 2021

and

CMP.No.13782 of 2021

(Through Video Conference)

Jeevanantham

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

Versus

1.The Commissioner
Namakkal Municipality
Paramathi Road
Namakkal District.

Manivannan (died)
Son of Murugesan
Door No.7/46, Kuttai Street
SP Pudhur
Namakkal Taluk

2.Maniammal @ Mani

3.Kanthamani

4.Vijayakumar

5.Renuka

6.Boopathy

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

COMMON PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, the order and decreetal order in I.A.Nos.5 & 6 of 2021 in O.S.No.159 of 2013 on the file of the Principal Distirct Munsif Court, Namakkal is unjust, illegal and in any event liable to be set aside.



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In all cases:

For Petitioner : M/s.R.Poornima
For Respondents : Mr.M. Raja Mathivanan for R1
M/s.S.Senthil for R3 and R5

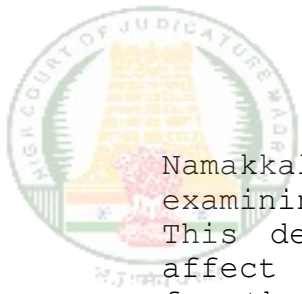
COMMON ORDER

Since the issue involved in these Civil Revision Petitions are one and the same, they are disposed of by this common order.

2. These Civil Revision Petitions are filed against the order passed in I.A. Nos.5 and 6 of 2021 in O.S.No159 of 2013 on the file of the Principal District Munsif Court, Namakkal.

3. I.A. No.5 of 2021 was filed for re-opening the case of the petitioner/plaintiff and I.A.No.6 of 2021 was filed for examining the first defendant as a witness on the side of the petitioner/plaintiff. It is seen from the affidavit filed in support of these applications that the suit was filed for mandatory injunction of cancelling the lease in favour of the second defendant. The evidence on the side of the plaintiffs and D2 have been completed and the case is posted for arguments. The first defendant had filed a written statement and had not chosen to examine any witnesses. The defendants D4 to D6 have produced documents to show change of lease hold. The first defendant has to be examined with regard to the documents produced by the defendants D4 to D6. The connected documents have to be summoned from the first defendant and the documents filed by the defendants D4 to D6 have to be confronted with the documents of the first defendant. It is necessary, for this purpose, to re-open the case of the petitioner and examine the first defendant as a witness on the side of the plaintiffs. The learned Principal District Munsif, Civil Judge (Junior Division), Namakkal, after considering the rival submissions, dismissed both the petitions. Challenging the said order of dismissal, these Civil Revision Petitions are preferred.

4. The learned counsel for the petitioner submitted that examination of first defendant is absolutely necessary for resolving the issue between the petitioner and other defendants. For the reasons best known to the first defendant, he has not chosen to examine himself as witness or depute someone as a witness. This is the first petition filed by the petitioner for re-opening the case for the examination of first defendant's witness. The respondents/defendants filed petitions for re-opening the case and re-calling the witnesses and they were favourably considered by the learned Principal District Munsif,

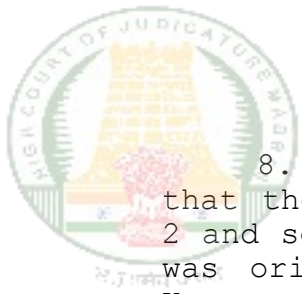


Namakkal. But the learned Judge denied the opportunity of examining the first defendant as a witness to the petitioner. This denial of opportunity to the petitioner would seriously affect the case of the petitioner. Therefore, learned counsel for the petitioner seeks to set aside the order of the learned Principal District Munsif, Civil Judge (Junior Division), Namakkal and prays that the petitioner be given an opportunity of examining the first defendant as witness on the side of the petitioner.

5. In response, the learned counsel for the respondents submitted that the petitioner cannot seek to examine defendant as a witness on their side. It is further submitted that it is not fair on the part of the petitioner to file application to examine defendant as a witness when the case is pending for advancing the arguments of both the parties. Filing of these applications is nothing but an exercise to delay the proceedings in the suit. Therefore, the learned counsel for the respondent prayed for dismissal of these Civil Revision Petitions and confirming the order of the learned Principal District Munsif, Namakkal.

6. Considered the rival submissions and perused the records.

7. Before deciding the merits of the petition for re-opening the case of the petitioner for re-calling the first defendant as a witness on their side, it is necessary to understand the case filed by the petitioner. The prayer in the suit is to issue mandatory injunction to the first defendant Namakkal Municipality Commissioner, to cancel the license issued in favour of the second defendant and issue license in favour of the plaintiff and third defendant. It is clear from the prayer that the main defendant in the suit is the first defendant. The first defendant's evidence is much relevant and important for the proper adjudication of this case. The facts in brief is that the petitioner claims that the suit property belong to the first defendant. The Petitioner's father one M.Karunanithi and one Janaki took lease of the suit property jointly and were running tiffen center in the name of Karunanithi Tiffen centre. The lease deed is in the name of Janaki. Subsequent to the death of Janaki, the first defendant started receiving lease amount from Karunanithi. Electricity consumption receipts are being issued in the name of Karunanithi. When the first defendant tried to forcibly evict Karunanithi, he filed the suit in O.S.No.351 of 1999 and got decree in his favour. Karunanithi was not able to run the tiffen center and hence he permitted his brother and power agent, the second defendant, to run the business. Taking advantage of this indulgence, the second defendant changed the lease in his name that necessitated the filing the suit for the relief aforesaid.



8. Thus the narration of the case of the petitioner shows that the real issue in controversy between the plaintiffs 1 and 2 and second defendant and defendants D4 to D6, is a lease which was originally granted in favour of Janaki, later claimed by Karunanithi who is father of the petitioner. The first defendant is important in this case and therefore, the first defendant's side evidence is absolutely necessary for resolving the issue between the petitioner and other defendants. It is not known as to why the first defendant has not chosen to examine himself as witness or depute anyone as witness.

9. Today, Mr. M. Raja Mathivanan, learned counsel appearing for the first respondent is present before this Court. The learned counsel for the first respondent submitted that he is ready to follow the orders of this Court.

10. As already indicated the examination of first respondent or any other responsible officer of Namakkal Municipality, as witness in this case, is absolutely necessary for resolving the real issue in controversy between the petitioner and other respondents. Therefore, this Court directs the first respondent to either appear and give evidence or depute a responsible officer to appear before the trial Court and give evidence. Since the evidence of the first respondent is already closed, the learned counsel representing for first defendant before the trial Court is directed to file an application for re-opening the case of the first defendant to give evidence. On such an application being filed, the learned Principal District Munsif, Civil Judge (Junior Division), Namakkal, is directed to allow the application and examine the first respondent or the officer deputed by the first respondent as witness on the side of 1st defendant. Petitioner will have every opportunity to confront whatever the documents produced by the defendants D4 to D6 in connection with lease. In this view of the matter, this Court finds that it is not necessary to examine the first respondent as a witness on the side of the petitioner but the first respondent to be examined as the defendants' witness.

11. Accordingly, these Civil Revision Petitions are disposed. No costs. Consequently, connected miscellaneous petitions is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Munsif,
Civil Judge (Junior Division),
Namakkal.

2.The Commissioner
Namakkal Municipality
Paramathi Road
Namakkal District.

Copy to:

The Section Officer,
V.R.Section,
High Court,
Madras.

+2ccs to Mr.S.Senthil, Advocate Sr Nos.55224 & 55225
+1cc to M/s.R.Poornima, Advocate Sr No.55718

C.R.P.Nos.1780 & 1781 of 2021

BR (CO)
PR (26/11/2021)