

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(P.D).Nos.357 and 358 of 2014
and M.P.No.1 of 2014

M.S.Mathivaanan

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

Vs.

1.S.Gnanasekaran
2.J.K.K.Angappan (Died)
3.Tamilnadu Industrial Investment
Corporation, Branch Office at
Sri Lakshmi Complex
4/22, Omalur Main Road
Swornapuri
Salem.
4.J.K.A.Kannammal
5.J.K.A.Kumararaja
6.J.K.A.Kandasamy
7.J.K.A.Ashok
8.Velumani

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

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the fair and decretal orders dated 23.10.2013 made in I.A.Nos.953 and 954 of 2013 in O.S.No.422 of 2008 on the file of the learned Subordinate Judge, Tiruchengode.

In both the C.R.P's.:

For Petitioner	: Mr.N.Manokaran
For Respondents	: Mr.R.Marudhachalamurthy for R1, R4 to R8
For R2	: Died (Steps taken)
For R3	: Not ready in notice

COMMON ORDER

These Civil Revision Petitions have been directed as against the fair and decretal orders dated 23.10.2013 made in I.A.Nos.953 and 954 of 2013 in O.S.No.422 of 2008 on the file of the learned Subordinate Judge, Tiruchengode.

2.In both the Civil Revision Petitions, the petitioner is the plaintiff. He filed a suit for declaration and recovery of possession as against the respondents herein. After examination of P.W.1, the 1st respondent herein filed a petition to reopen and recall the P.W.1 for further cross examination. Both the petitions were allowed and aggrieved by the same, the present Civil Revision Petitions have been filed.

3.The learned counsel for the petitioner would submit that no reason was stated to reopen and recall the P.W.1 and they simply said that some important questions were missed out and for asking the same, P.W.1

was recalled.

4. Infact the petitioner filed a detailed counter stating that the P.W.1 was cross examined for more than 5 hours by all the defendants and after a period of one year, the petitions were filed to reopen and recall the P.W.1. He further stated that the Court below allowed the petitions only for the reason that the petitions were filed on first occasion and it was allowed. In support of his contention, he relied upon the Judgment reported in **(2016) 11 Supreme Court Cases 296**, in the case of **Ram Rati Vs. Mange Ram (dead) through legal representatives and others**. Relevant portions are given below:-

"12. In Vadiraj Naggappa Vernekar Vs. Sharadchandra Prabhakar Gogate, this principle has been summarised at paras 25, 28 and 29: (SCC pp. 414-415)

"25. In our view, though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable the court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not

intended to be used to fill up omissions in the evidence of a witness who has already been examined.

28.The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.

29.It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination."

5.On perusal of the records, it shows that the suit was filed by the petitioner for declaration and recovery of possession. After examination of P.W.1, the 1st defendant in the suit viz., the 1st respondent herein filed petitions to reopen and recall the P.W.1. Both the petitions were allowed and permitted the 1st respondent to cross examine the P.W.1.

6. Therefore, this Court finds no irregularity or infirmity in the orders dated 23.10.2013 made in I.A.Nos.953 and 954 of 2013 in O.S.No.422 of 2008 on the file of the learned Subordinate Judge, Tiruchengode. If the 1st respondent is allowed to cross examine, by this time the trial might be completed in the suit and the suit is pending on the file of the learned Subordinate Judge, Tiruchengode, only because of this petition.

7. Therefore, the trial Court is directed to fix a date for cross examination of P.W.1 and if the 1st respondent fails to cross examine the P.W.1 on the date to be fixed by the trial Court, the trial Court is directed to proceed with the case and further dispose of the suit within a period of three months from the date of receipt of a copy of this order.

26.02.2021

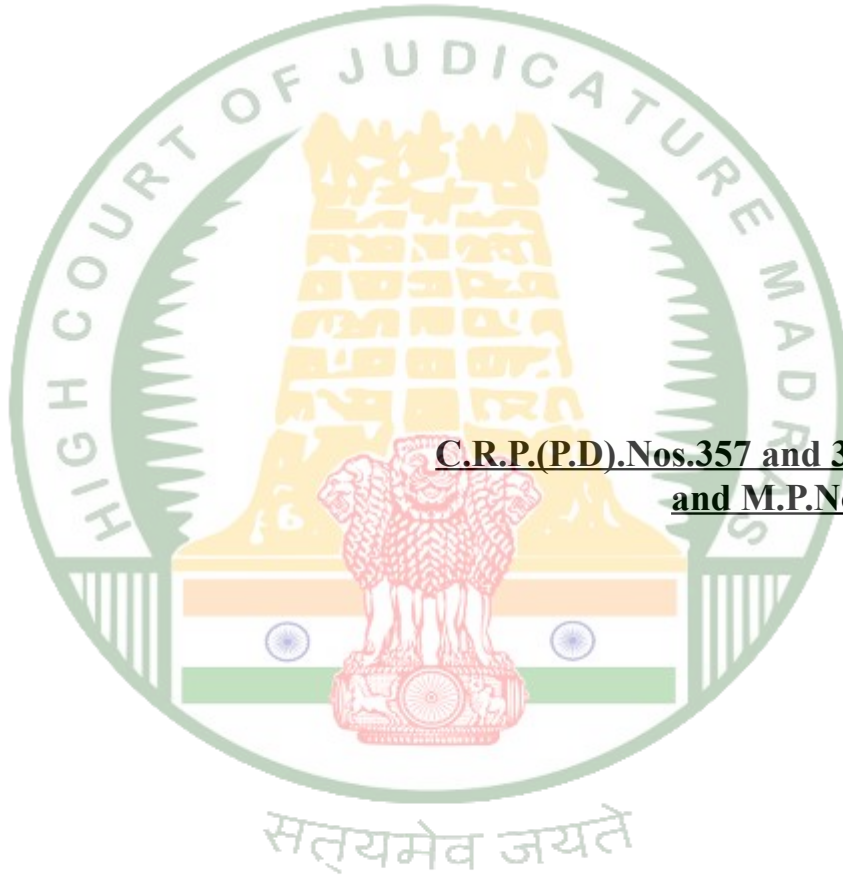
Index: Yes/No
Speaking Order: Yes/No
Jer

To
The Subordinate Judge, Tiruchengode.

C.R.P.(P.D).Nos.357 and 358 of 2014

G.K.ILANTHIRAIYAN.J,

Jer



C.R.P.(P.D).Nos.357 and 358 of 2014
and M.P.No.1 of 2014

WEB COPY

26.02.2021