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C.R.P. (PD) No.2329 of 2021
and CMP No.17673 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Civil Revision Petition (PD) No.2329 of 2021
and CMP No.17673 of 2021

M.Gomathi

.. Petitioner

Vs.

1. S.Parwatham

2. S.Gopalakrishnan

3. Sangeetha

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to allow the revision petition setting aside the fair and decreetal order made in I.A.No.4 of 2020 in O.S.No.465 of 2018 dated 11.01.2021 on the file of the Principal District Munsif, Erode.

For Petitioner : Mr. R.Bharanidharan

For Respondent : Mrs.R.Sripriya
for M/s.V.Raghavachari



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ORDER

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This Revision is directed against an order made in IA No.4 of 2020 in OS No.465 of 2018 on the file of the Principle District Munsif, Erode.

2. The said application was filed by the plaintiff seeking to issue summons to the following persons to depose as witnesses in the suit:

1. The Assistant Engineer, PWD LBP Canal Department, Arachallur;
2. The Tahsildar, Modakkurichi;
3. The Revenue Divisional Officer, Erode;
4. The Village Administrative Officer, Elumathur A(அ) Village; and
5. The Sub Inspector of Police, Modakurichi Police Station, Erode.

The suit is one for an injunction restraining the defendants from trespassing into the suit property and attempting to lay a channel to take the LBP Canal water to the lands of the defendants.

3. The plaintiff was examined as P.W.1 and he was cross-examined. Thereafter he came up with this application to issue summons to the above official witnesses, in order to prove that the LBP Canal is in existence and



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there was no need for laying a new canal. According to the plaintiff in order to prove his case, the evidence of these official witnesses is necessary and since they are official witnesses they would not appear without a proper summons through Court.

4. This application was opposed by the defendants contending that it is belated and it has been filed only to fill up the lacuna that had been created during the cross-examination of the plaintiff as P.W.1. The learned Trial Judge agreed with the defence and dismissed the application.

5. I have heard Mr.R.Bharanidharan, learned counsel appearing for the petitioner in support of the Revision and Mrs.R.Sripriya, learned counsel appearing for M/s.V.Raghavachari, for the respondents in opposition.

6. Mr.R.Bharanidharan, learned counsel appearing for the petitioner would submit that being official witnesses, he could not produce them without issuance of summons. Mere failure on his part to file the list of



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witnesses cannot deny him an opportunity to have the witnesses examined.

The learned Trial Judge has dismissed the application concluding that no reason has been adduced in the affidavit filed in support of the application.

7. No doubt, the affidavit is bereft of any reason, at the same time when the dispute is relating to existence of the channel or otherwise and the plaintiff seeks to examine official witnesses to prove his case, I am of the considered opinion that she should be afforded an opportunity to establish her case. Denial of a right to let in evidence is a very serious consequence and the same cannot be visited with for minor irregularities in filing of the application. Non-assigning of reasons in most of the cases is a failure on the part of the counsel. Therefore, the litigant should not be made to suffer for such reason.

8. However, the plaintiff cannot seek to examine all and sundry in support of his case. Since the dispute relates to existence or otherwise of the canal, I find that it will be sufficient, if the plaintiff is permitted to examine the Assistant Engineer, P.W.D., LBP Canal Department, Arachallur and the



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Village Administrative Officer, Elumathur A(அ) Village.

9. Hence the Civil Revision Petition is **allowed**, the order of the learned Trial Judge is set aside, I.A. No.4 of 2020 will stand allowed only in respect of two witnesses namely the Assistant Engineer, P.W.D. LBP Canal Department, Arachallur and the Village Administrative Officer, Elumathur A(அ) Village, in respect of the other witnesses, the application will stand dismissed. The Trial Court will issue summons to the above two witnesses to examine them and proceed in accordance with law.

10. The Trial Court shall endeavor to complete the examination and dispose of the suit within a period of six months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed. No costs.

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Index: Yes/No
Internet: Yes
Speaking order
jv

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R.SUBRAMANIAN, J.

jv

To

1. The Principal District Munsif,
Erode
2. The Section Officer,
V.R.Section,
High Court of Madras.

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