



C.R.P.(PD).No.2441 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.2441 of 2021

and

C.M.P.No.18519 of 2021

Nagaraji

.. Petitioner

Vs.

1. Sivasankar

2. Karthikeyan

3. Vellakanni

4. Dharmalingam

5. Nandhini

6. Samundeeswari

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal dated 02.09.2021 passed in I.A.No.1 of 2021 in O.S.No.140 of 2015 on the file of the Additional District Munsif Court, Tirupattur, Vellore District.

For Petitioner : Mr.PA.Sudesh Kumar



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ORDER

The petitioner, who is the plaintiff in O.S.No.140 of 2015 challenges the order of the learned Additional District Munsif, Tirupattur made in I.A.No.1 of 2021, an application seeking to scrap and eschew the evidence of P.W.2 on the ground that P.W.2 has not presented himself for cross-examination.

2. The suit is one for declaration of title and consequential injunction. The plaintiff examined one Chinnadurai as P.W.2 on 07.01.2021. Thereafter, the case adjourned for cross-examination of P.W.2 on four occasions namely 20.01.2021, 09.02.2021, 12.02.2021 and 05.03.2021. Since P.W.2 did not appear, accepting the statement made by the plaintiff, the evidence of P.W.2 was closed and P.W.3 was examined on 30.03.2021.

3. It is at this stage, the defendants came up with this instant application in I.A.No.1 of 2021, seeking to scrap and eschew the evidence of P.W.2, since he was not available for cross-examination. This application was resisted by the plaintiff contending that P.W.2 was actually prevented from appearing and that he is no more.

4. The learned trial Judge accepted the claim of the defendants and



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relying upon the judgment of this Court in ***Rajendran Vs. A.Swaminathan***

in ***CRP.(PD) (MD) No.1132 of 2010*** and ***Antony Matilda Vs. Vairamuthu***

in ***CRP. (PD) (MD) No.1132 of 2017*** concluded that the evidence in the absence of cross-examination shall not remain on record. On such a conclusion, the learned trial Judge allowed the application.

5. I have heard Mr.PA.Sudesh Kumar, learned counsel appearing for the petitioner in this Revision.

6. Mr.PA.Sudesh Kumar, learned counsel would draw my attention to the judgment of this Court in ***Dr.Sunder Vs. Inspector of Police*** in ***Crl.O.P.No.21519 and 21520 of 2017***, wherein, the Hon'ble Mr.Justice N.Anand Venkatesh has observed that evidence without cross-examination can be relied upon and cannot be scrapped. There is a factual difference in the case before the Hon'ble Mr.Justice N.Anand Venkatesh. The learned Judge found that the other party had opportunity to cross-examine the witness and did not avail of the opportunity.

7. But, in the case on hand, it is clear from the records that the witness



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had not appeared for cross-examination on four occasions and it is the plaintiff who had closed the evidence of P.W.2, without taking any coercive steps to summon P.W.2. I am therefore of the considered opinion that the judgment of the Hon'ble Mr.Justice T.Ravindran, in *Antony Matilda Vs. Vairamuthu* in *CRP. (PD) (MD) No.1132 of 2017* dated *08.09.2017* would squarely cover the issue in the case on hand.

8. Hence, I do not see any merits in this Revision and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

17.11.2021

dsa/ham

Index : No

Internet : Yes

Speaking order



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To

Additional District Munsif Court,
Tirupattur,
Vellore District.



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R.SUBRAMANIAN, J.

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