

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3244 of 2017
and C.M.P.No.15178 of 2017

1.Selvaraj
2.Devarasu

.. Petitioners

Vs.

Kandasamy

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 24.03.2017, made in I.A.No.366 of 2017 in O.S.No.401 of 2013, on the file of the Principal District Munsif Court, Namakkal.

For Petitioners : Mr.S.Kalyanaraman

For Respondent : No appearance

ORDER

(The matter is heard through 'video conferencing/hybrid mode')

This Civil Revision Petition is filed against the fair and decreetal

order dated 24.03.2017, made in I.A.No.366 of 2017 in O.S.No.401 of 2013, on the file of the Principal District Munsif Court, Namakkal.

2.The petitioners are defendants 2 and 3 in O.S.No.401 of 2013, on the file of the Principal District Munsif Court, Namakkal. The respondent filed the said suit against the petitioners and two others for injunction, claiming right of pathway. The petitioners are contesting the suit by filing written statement. The respondent let in evidence and closed his side. The suit was posted for defendants' side evidence on 07.03.2017. On that day, the petitioners and the defendants 1 and 4 were not present and they did not produce any evidence. The learned Judge closed the evidence of defendants and posted the suit for arguments. The petitioners filed I.A.No.366 of 2017 to reopen the defendants' side evidence. According to the petitioners, the 1st petitioner is a Lorry Driver and he went to other state for his work. The 2nd petitioner, employed in a Company in Coimbatore, could not get leave and hence, both the petitioners could not appear before the Court on 07.03.2017. The respondent filed counter

affidavit and stated that reason given by the petitioners is not acceptable and only to drag on the proceedings, the petitioners have filed I.A. and prayed for dismissal of I.A.No.366 of 2017. The learned Judge, considering the averments in the affidavit and counter affidavit, dismissed I.A.No.366 of 2017.

3.Against the said order of dismissal dated 24.03.2017, made in I.A.No.366 of 2017 in O.S.No.401 of 2013, the petitioners have come out with the present Civil Revision Petition.

4.Heard the learned counsel appearing for the petitioners and perused the materials available on record. Though notice has been served on the respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

5.From the materials on record, it is seen that the respondent has filed suit for permanent injunction restraining the petitioners and two

others, claiming right of pathway. The petitioners filed written statement and are contesting the suit. The respondent let in evidence by examining 3 witnesses as P.W.1 to P.W.3. The counsel for petitioners cross-examined all the witnesses. From the order of the learned Judge, it is seen that the counsel for the petitioners have cross-examined P.W.3– Village Administrative Officer on the same day of chief-examination. Further, the counsel for the petitioners also cross-examined P.W.1 and P.W.2, without any delay and respondent side evidence was closed on 05.12.2016, the suit was posted for defendants' side evidence on 14.12.2016 and was adjourned to 22.12.2016 and 04.01.2017. On 04.01.2017, the petitioners filed I.A.No.20 of 2017 to recall P.W.1. The same was allowed and the learned counsel for the petitioners cross-examined P.W.1 on 24.02.2017 and the suit was posted for defendants' side evidence on 07.03.2017. On 07.03.2017, the petitioners and the defendants 1 and 4 did not produce any witness. The learned Judge closed the evidence of defendants and posted the suit for arguments.

6.From the above materials, it is seen that when the suit was posted for evidence of defendants on 07.03.2017, the learned Judge closed the evidence of defendants, as no witness was produced on that day. The learned Judge ought to have given one more opportunity to the petitioners to produce their witnesses. Further, the petitioners have filed present I.A. immediately on 15.03.2017 itself. The learned Judge ought to have considered the fact that the counsel for petitioners cross examined all the three witnesses produced by respondent without any delay, especially P.W.3 – Village Administrative Officer, on the very same day of chief-examination. Considering the entire materials, this Court is of the view that the petitioners must be given an opportunity to let in their evidence. In view of the above, the order of the learned Judge dated 24.03.2017 made in I.A.No.366 of 2017 in O.S.No.401 of 2013 is set aside and I.A.No.366 of 2017 is allowed. The learned Principal District Munsif, Namakkal, is directed to fix a date for the evidence of defendants and petitioners are directed to let in evidence without seeking unnecessary adjournments.

With the above direction, this Civil Revision Petition is allowed.

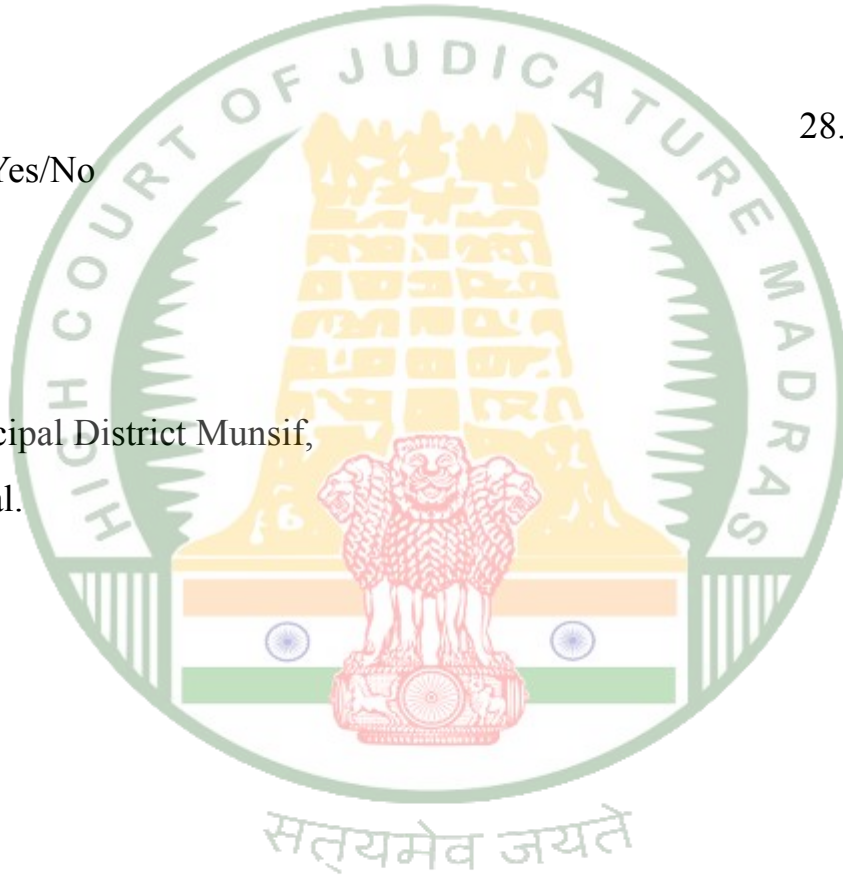
No costs. Consequently, connected Miscellaneous Petition is closed.

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Index :: Yes/No
gsa

To

The Principal District Munsif,
Namakkal.

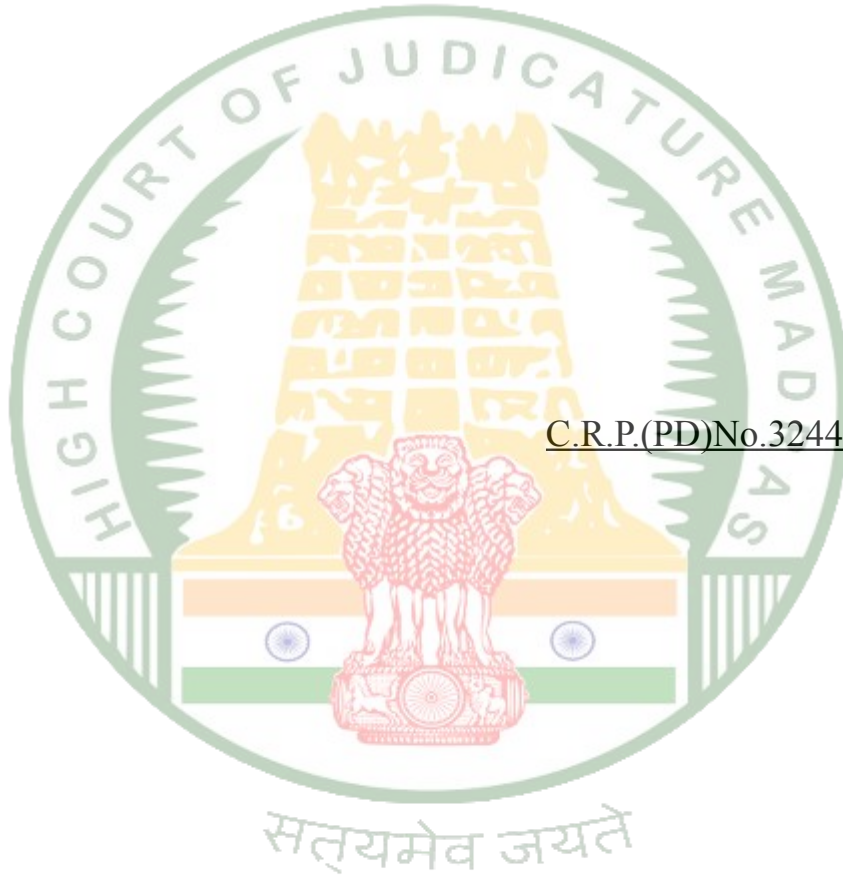


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V.M.VELUMANI, J.

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