

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

**CRP (PD).Nos.4332 and 4335 of 2018
and
CMP.No.23706 of 2018**

CRP (PD).No.4332 of 2018

1. Varadharaja Pillai
2. Vaithilingam
3. Arunachalam

... Petitioners

Vs.

Narayanan

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 03.03.2018 in I.A.No.58 of 2018 in O.S.No.225 of 2012 on the file of the learned District Munsif, Dharmapuri by allowing this Civil Revision Petition.

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For Petitioners : Mr.T.Gobinath

For Respondent : Notice Served (No Appearance)

CRP (PD).No.4335 of 2018

1. Varadharaja Pillai
2. Vaithilingam
3. Arunachalam

... Petitioners

Vs.

Narayanan

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 03.03.2018 in I.A.No.59 of 2018 in O.S.No.225 of 2012 on the file of the learned District Munsif, Dharmapuri by allowing this Civil Revision Petition.

For Petitioners : Mr.T.Gobinath

For Respondent : Notice Served (No Appearance)

COMMON ORDER

These Civil Revision Petitions are filed as against the fair and decretal orders passed in I.A.Nos.58 and 59 of 2018 in O.S.No.225 of 2012 dated 03.03.2018 on the file of the learned District Munsif, Dharmapuri,

thereby dismissing the petitions to re-open and re-call P.W.1.

2. In both petitions, the petitioners are the defendants and the respondent is the plaintiff. The respondent filed a suit for declaration and permanent injunction as against the petitioners. When the suit was ripe for trial, the plaintiff's side witnesses were examined as P.W.1 and P.W.2. The said P.W.2 was examined in chief and the suit was posted for cross examination of P.W.2 on 04.01.2018 and on that day, the petitioners were absent and his counsel was also absent due to his illness. Therefore, the plaintiff's side evidence was closed and the suit was posted for defendants' side evidence. At that juncture, the petitioners filed the petitions for re-open and re-call P.W.1 instead of P.W.2. The Court below verified the records and found that when the suit was posted for cross examination of P.W.2 on 04.01.2018, the petitioners as well as their counsel were not present before the Court below. Therefore, they wrongly stated P.W.1 as P.W.2 in their affidavit and the petitions.

3. The learned counsel for the petitioners submitted that admittedly P.W.2 was not cross examined by the petitioners and they may be given one more opportunity to defend the suit by cross examining P.W.2.

4. Though notice was served on the respondent and the name is also printed in the cause list, no one appeared on behalf of the respondent.

5. Heard the learned counsel for the petitioners.

6. It is seen that the petitioners filed the petitions to re-open and re-call P.W.1 instead of P.W.2. On a perusal of the records, it reveals that P.W.1 was fully cross examined by the petitioners and P.W.2 was examined in chief and the suit was posted for cross examination of P.W.2 on 04.01.2018 and on that day, the petitioners were absent and also their counsel was absent and as such, they failed to cross examine P.W.2.

7. Considering the above, the petitioners may be given one more opportunity to defend the suit by cross examining P.W.2 on payment of

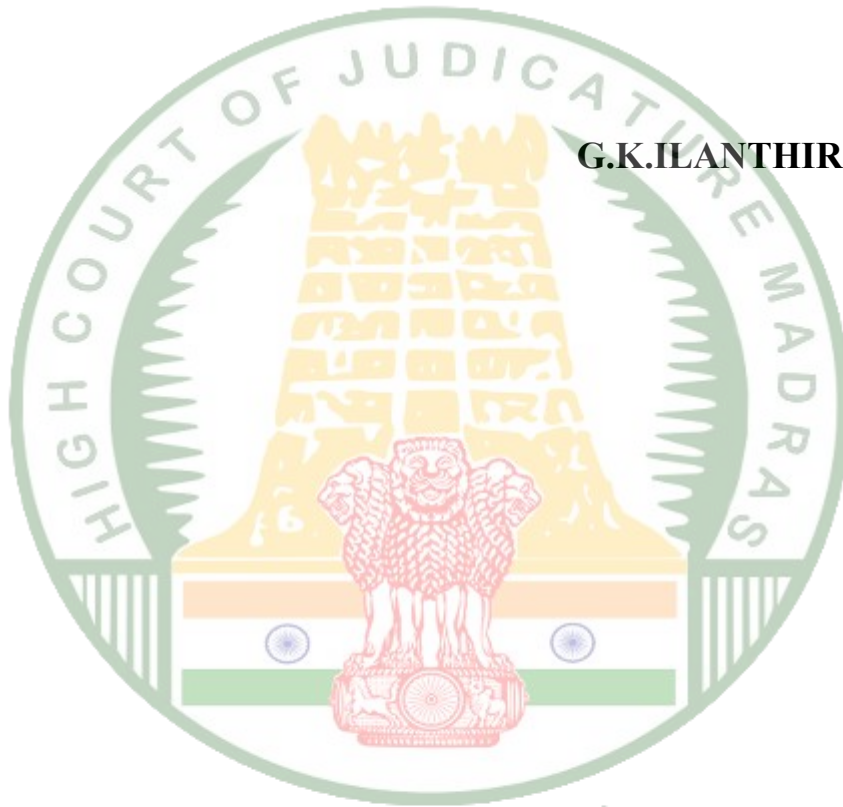
costs, since the suit was posted for defendants' side evidence. Accordingly, these Civil Revision Petitions are allowed and the orders passed in I.A.Nos.58 and 59 of 2018 in O.S.No.225 of 2012 dated 03.03.2018 are hereby set aside on condition that the petitioners shall pay a sum of Rs.2,500/- as costs to P.W.2 within a period of two weeks from the date of receipt of a copy of this order. If the petitioners failed to cross examine P.W.2 on the date fixed by the Trial Court, the Trial Court is directed to proceed further with the suit in accordance with law. Consequently, the connected Miscellaneous Petition is closed. No costs.

27.07.2021

Speaking/Non-speaking order
Index : Yes/No
kv

To

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



G.K.ILANTHIRAIYAN,J.

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