



C.R.P.No.4637 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P.No.4637 of 2013
and M.P.No.1 of 2013

1) Damodaran

2) Thangarathnam

3) Dhanalakshmi @ Kamalam

4) S.K.Sampathkumar

... Petitioners
/defendants

Vs.

Muthusamy @ Raju (Deceased)

1. M.Indirani

2. Vivekananthan

3. Sudha Chandrasekar

4. Minor Eniya

5. Nitheeswari

6. Krishnaveni

7. Balasubramanian

8. Janakiraman

...Respondents/Plaintiffs



C.R.P.No.4637 of 2013

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and final order passed in I.A.No.517 of 2013 dated 05.10.2013 in O.S.No.24 of 2013 on the file of Sub Court, Perundurai.

For Petitioners : M/s.P.T.Ramadevi &
M/s.A.Sundaravadhanan

For RR 2 to 8 : No Appearance

ORDER

Aggrieved against the order made in I.A.No.517 of 2013 dated 05.10.2013 in O.S.No.24 of 2013, the petitioners/defendants has preferred the present revision.

2. The respondents/ plaintiffs filed O.S.No.24 of 2013 for specific performance. An application under Section 151 of the Civil Procedure Code was filed in I.A.No.517 of 2013 by the defendants/revision petitioners to eschew the evidence of P.W.1. However, the Court below dismissed the application vide order dated 05.10.2013. Aggrieved against the same, the revision petitioners/defendants have preferred the present revision.



C.R.P.No.4637 of 2013

3. The first respondent herein, who is the 1st plaintiff, namely Muthusamy @ Raju was examined as PW-1 and filed his Proof affidavit on 2.6.2010. Thereafter, he was cross examined in part on 23.06.2010. For cross examination of PW-1, the suit was adjourned. In spite of several adjournments the R1-1st plaintiff wantonly did not turn up and subject himself for cross examination. Subsequently, it was reported to court that P.W.1 was died on 1.09.2010. The trial court recorded the death of P.W.1 and closed the evidence of P.W.1.

4. It is the contention of the learned counsel for the petitioners/defendants that since P.W.1 has not been cross examined in full, his evidence in chief cannot be relied on for any purpose, therefore, the evidence of P.W.1 has to be eschewed. But, the learned Judge, without considering the same, dismissed the application.

5. There is no representation for the respondents 2 to 8.

6. The learned Judge, while dismissing the application filed by the defendants pointed out that when P.W.1 was alive, at the request of the



C.R.P.No.4637 of 2013

defendants, P.W.1 was cross examined in part and only at the request of defendants, for cross examination of P.W.1, the matter was adjourned for several times, but the defendants did not cross examine P.W.1 fully. Therefore, the petition seeking eschewing the evidence of P.W.1 would not arise.

7. I do not find any infirmity in the reasonings given by the learned Judge while dismissing the petition filed by the defendants. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.02.2022

Index :Yes/No

Internet:Yes/No

Sts

To

1. The Sub Court, Perundrai.

2. The V.R.Section,
Madras High Court.



WEB COPY



C.R.P.No.4637 of 2013

J. NISHA BANU, J.
Sts

Order made in
C.R.P.No.4637 of 2013

Dated:
22.02.2022