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C.R.P.No.1645 & 1646 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.Nos.1645 & 1646 of 2018
and C.M.P.Nos.8840 and 8841 of 2018

R.Radhakrishnan

.. Petitioner in both C.R.P's
/Plaintiff

Versus

- 1) The Branch Manager,
Catholic Syrian Bank,
No.474, 476 & 478 Mahatma Gandhi Road,
Puducherry.
- 2) C.Sadanandam
- 3) Valliammal
- 4) Vaikundakesavan
- 5) V.Aravani Selvam

.. Respondents in both
C.R.P's
/defendants

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the common order dated 13.03.2018 passed in I.A.Nos.222 & 223 of 2018 in O.S.No.218 of 2008 by the I Additional District Munsif Judge, Puducherry.

In both CRP's:	For Petitioner	: Mr.V.S.Senthil Kumar
	For R-1	: M/s.K.Rajasekaran
	For R-2	: M/s.K.Mohan
	For RR 3 – 5	: No Appearance



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COMMON ORDER

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These Civil Revision Petitions are filed challenging the common order, dated 13.03.2018 passed in I.A.Nos.222 & 223 of 2018 in O.S.No.218 of 2008 by the I Additional District Munsif Judge, Puducherry. Since the issue involved in both the civil revision petitions are one and the same, they are disposed of by this common order.

2. The petitioner herein is the plaintiff in O.S.No.218 of 2008 which was filed for permanent injunction against the respondents. I.A.No.222 of 2018 was filed to reopen the plaintiff's side evidence to recall the P.W.1 whereas, I.A.No.223 of 2018 was filed to recall the P.W.1 for the reasons that during additional chief examination of P.W.1, exhibits Ex.A17 and A19 were marked for mentioned Cadastre No.652 Bis, 655 ½ , 655 2/2 pt, 654/pt whereas Ex.A22 reveals the order of attachment by DRT in which Cadastre Number is mentioned and in the sale deed and sale certificate also Cadaster numbers were mentioned. For the aforesaid reasons, the petitioner had filed the said Interlocutory Applications to recall P.W.1 to differentiate and elaborate about the same.



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3. The Trial Court dismissed the above Interlocutory Applications vide common order dated 13.03.2018, stating that the documents filed by the plaintiff/revision petitioner are xerox copies and the same are without proper authentication. Though the documents are public documents, it was held that xerox copies cannot be marked through chief examination of any party and only certified copies can be marked and the reason adduced by the petitioner was not convincing.

3(i).The Trial Court also upheld the fact that there is no need to elaborate the contents in the document until the Court needs any clarification in which the petitioner is not at all a party. It is further stated that since the earlier document filed by the petitioner itself speaks and exposes the alleged difference, the request to recall and reopen his evidence is an act to prolong the proceeding. Aggrieved by the same, the petitioner has preferred the present revisions.

4. The learned counsel for the petitioner drew attention of this Court to the earlier order dated 03.12.2021 passed by this Court in C.R.P.Nos.673, 676 & 677 of 2019, wherein, under similar circumstances, the learned Judge allowed the revision petitions by setting aside the order passed by the Court below. Therefore, the learned counsel for the petitioner prayed for the similar relief in the present revision petitions also.



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5. Learned counsel appearing for the respondents 1 and 2 would submit that the application for reopening of evidence cannot be sustained if the party had an opportunity to produce such evidence earlier but the petitioner failed to do so. He further stated that if the evidence is clear and unambiguous, the object of the application filed by the petitioner to reopen and recall the witness is merely to protract the proceedings. Hence, he prayed to dismiss the present petition.

6. Heard the learned counsel for the petitioner as well as the learned counsel appearing for the first and second respondents and perused the materials placed before this Court.

7. It is well settled principle that the Court can recall a witness at any stage either on its own motion or on an application filed by any party to suit to protect the substantial rights of the parties, when no serious prejudice is likely to be caused to the defendants. This Court vide order dated 03.12.2021, in C.R.P.Nos.673, 676 & 677 of 2019, held that when certified copies of the documents had already been filed by the plaintiff, courts can recall a witness at any stage.



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8. In view of the above factual position, this Court is unable to sustain the common order passed by the court below.

9. In result, the respondents/defendants have no prejudice in recalling the witness. The only objection raised by the respondents/defendants is that recalling the witness would result in protracting the suit. But as rightly pointed out by the learned counsel for the revision petitioner, the order impugned is a non-speaking order and is liable to be set aside. In such circumstances, the common order, dated 13.03.2018 passed in I.A.Nos.222 & 223 of 2018 in O.S.No.218 of 2008 by the I Additional District Munsif Judge, Puducherry is set aside.

10. Accordingly, the Civil Revision Petitions are Allowed. No costs. Consequently, connected miscellaneous petitions are closed.

14.06.2022

Index : Yes / No

Internet : Yes

msv

To:

- 1) The I Additional District Munsif Judge, Puducherry.
- 2) The Section Officer, V.R.Section, High Court, Madras.



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J.NISHA BANU, J.,

msv

Common Order made in
C.R.P.Nos.1645 & 1646 of 2018
and C.M.P.Nos.8840 and 8841 of 2018

14.06.2022