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CRP.(PD).Nos. 1323 & 1325 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2022

CORAM:

**THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI**

CRP.(PD).Nos. 1323 and 1325 of 2019

and

C.M.P.No. 8707 of 2019

- 1.Poongodi
- 2.Nithya
- 3.Santhosh Kumar
- 4.Balan
- 5.Jothimani

...Petitioners  
[in both CRPs]

Versus

- 1.S.Thangavel
- 2.A.Vasanthi
- 3.T.Kumar
- 4.P.Geetha
- 5.Vijayalakshmi
- 6.M.Prabhakaran
- 7.M.Karthikeyan
- 8.S.Devarajan
- 9.P.Gunasekaran
- 10.M.Siddhavelayutham
- 11.A.Sri Saradha

...Respondents  
[in both CRPs]

**Common Prayer:** Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decretal order, dated 30.01.2019 passed in I.A.Nos. 1 & 2 of 2019 in O.S.No. 105 of 2016 on the file of the Principal Sub Judge, Erode.



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For Petitioners : Mr.K.S. Jeyaganeshan

For RR 1 & 6 : Mr.C.S.Saravanan

For RR 2, 3, 5, 7 &

9 to 11 : No Appearance

Respondent - 4 : Mr.P. Navaneethakrishnan

Respondent - 8 : Insufficient Address

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### **COMMON ORDER**

Both Civil Revision Petitions have been filed to set aside the fair and decretal orders, dated 30.01.2019 passed in I.A.Nos. 1 and 2 of 2019 in O.S.No. 105 of 2016 by the learned Principal Sub Judge, Erode.

2. The learned counsel appearing for the petitioners/plaintiffs contended that they have right to reopening the evidence on the side of the defendants for the purpose of cross examination of DW1 by the petitioners/plaintiffs. He further contended that the trial Court simply dismissed the said applications as there was no reason assigned and without giving sufficient opportunities to the petitioners/plaintiffs to cross examine the defendants' side evidence. Therefore, he prays to allow this revision.



3. Per contra, learned counsel appearing for the respondents/defendants contended that DW1 died during the case. Liberty was given to the petitioners/plaintiffs to cross-examine the evidence on the side of the defendants after impleading the legal heirs of the deceased DW1. Since it has been pending and the petitioners/plaintiffs have not taken any steps to cross examine the DW1 for the past one year without any development. Hence, he prays to dismiss the above revision.

4. Heard both sides and perused the materials available on record.

5. On perusal of the records, it is seen that the petitioners/plaintiffs filed the suit in O.S.No.105 of 2016 for partition and permanent injunction before the learned Principal Sub Judge, Erode, against the respondents/defendants. The respondents/defendants contested the suit by way of filing written statement, issues have been framed and also trial has also been commenced. Cross-examination of PW1 was completed on side of the petitioners/plaintiffs. DW1 evidence was closed on 10.01.2019. At this juncture, the petitioners/plaintiffs have filed I.A.Nos.1 & 2 of 2019 under Order 18 Rule 17 r/w. Sec.151 of CPC., seeking to reopen & recall DW1 for the purpose of cross-examination on the side of the



petitioners/plaintiffs in the suit proceedings. After perusing the records, the trial Court dismissed the said applications without any reason. It is also seen that the trial Court has failed to cross examine the PW1 fully and no opportunity was given to the petitioners/plaintiffs to prove their case. The trial Court has not assigned any proper reason for dismissing the said applications. No prejudice would be caused to the respondents/defendants if these revisions are allowed. Hence, this Court is inclined to set aside the findings of the trial Court order dated 30.01.2019, the same is liable to be allowed.

6. Accordingly, both the Civil Revision Petitions are allowed. The order dated 30.01.2019 passed in I.A.Nos.1 & 2 of 2019 in O.S.No.105 of 2016 on the file of the Principal Sub Judge, Erode, is set aside. Further, the trial Court is directed to dispose of the suit within a period of four months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

**08.11.2022**

msm

Index : Yes/No

Speaking order : yes/no



1. The Principal Sub Judge, Erode.
2. The Section Officer, V.R. Section  
High Court, Madras.



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**T.V.THAMILSELVI, J.**

msm

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