



C.R.P.Nos.1634 & 1635 of 2020
and C.M.P.No.10026 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.Nos.1634 & 1635 of 2020

and

C.M.P.No.10026 of 2020

P.Karuppannan

... Petitioner in both CRPs

Vs.

Baby

... Respondent in both CRPs

Common Prayer : Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decretal order dated 21.07.2020 passed in I.A.Nos.03 & 2 of 2020 in O.S.No.278 of 2008 on the file of the District Munsif Court, Sankari.

In both CRPs:

For Petitioner	:	Mr.R.Marudhachalamurthy
For Respondent	:	Mr.P.Valliappan
		for M/s.P.V.Law Associates



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COMMON ORDER

The revision petitioner is the plaintiff in O.S.No.278 of 2008 on the file of the District Munsif Court, Sankari. He filed the suit against the respondent/defendant for specific performance of contract based on an unregistered sale agreement dated 05.12.2003.

2.The respondent/defendant filed his written statement denying the execution of the sale agreement. Both the parties went for trial after settlement of issues. Four witnesses were examined on the side of plaintiff and two witnesses were examined on the side of the defendant. Thereafter, the present revision petitioner filed an application in I.A.No.1379 of 2017 for examining the finger print expert and to mark his opinion as Ex.C1. The said application was dismissed by the trial Court judge vide her orders dated 12.01.2018, aggrieved over which CRP.No.502/2018 was filed by the civil revision petitioner/plaintiff. The said petition was allowed by this Court vide orders dated 09.03.2018



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directing the trial Court to permit the examination of finger print expert and to mark his opinion and also to dispose the suit on or before 30.07.2018. Thereafter, the finger print expert was examined as PW5 and cross examined by the defendant. Subsequently, the revision petitioner filed I.A.Nos.2 & 3 of 2020 to reopen the defendant's evidence and to recall DW1 for the purpose of cross examination. The respondent/defendant filed a counter and after full contest, the learned District Munsif, Sankari, dismissed both the applications vide his orders dated 21.07.2020 on the following grounds :

- 1) I.A.Nos.2 & 3 of 2020 are filed to protract the proceedings.
- 2) The DW1 was examined in the year 2017 and even though several adjournments were granted for the cross examination of DW1, the plaintiff did not avail those opportunities and had filed these two petitions only in the year 2019. Therefore, the intentions of the plaintiff cannot be said to be bonafide.
- 3) The applications filed by the plaintiff is also mischievous and frivolous.



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3.Heard Mr.R.Marudhachalamurthy, learned counsel appearing for the revision petitioner and Mr.P.Valliappan, learned counsel appearing for the respondent.

4.Mr.R.Marudhachalamurthy, learned counsel appearing for the revision petitioner/plaintiff contended that since the plaintiff was under the impression of cross examining DW1 after examination of finger print expert (PW5), he did not cross examine DW1. He would also contend that if an opportunity is given to the petitioner he is ready to cross examine DW1 on the same date without seeking for any adjournment.

5.Per contra, Mr.P.Valliappan, learned counsel appearing for the respondent contended that though several adjournments were granted to the revision petitioner/plaintiff to cross examine D.W1, he did not avail those opportunities.



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6. It is true that the petitions to reopen and to recall DW1 were filed at a belated stage. However, the suit is filed for specific performance of the contract based on an agreement dated 05.12.2003 the execution of which was denied by the defendant. In order to adjudicate upon the rival submissions of the parties the cross examination of DW1 (defendant) is absolutely necessary.

7. In the circumstances, the DW1 is directed to appear before the Court on 26.10.2022 without fail on which date the counsel for the revision petitioner/plaintiff should cross examine DW1 without seeking any adjournment. The cross examination should not be done in piece meal and it should be concluded on the same day. The trial Court is directed to dispose of the case on or before 30.11.2022. In case the judicial officer is on leave on 26.10.2022 the incharge judge is directed to record the evidence of DW1 on 26.10.2022.



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8.With the above directions, the Civil Revision Petitions are disposed of. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

18.10.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl

Issue order copy on 18.10.2022



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R. HEMALATHA, J.

mtl

To

- 1.The District Munsif Court, Sankari.
- 2.The Section Officer, VR Section, High Court, Madras.

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