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CRP.No. 1977 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2022

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

CRP.No. 1977 of 2020

and

C.M.P. No. 12282 of 2020

K.R. Kannan

.. Petitioner

Versus

Rajendran (Died)

1. R. Shanthi

2. K.R.Ravi

3. R.Revathi

.. Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 31.07.2020 made in I.A.No. 3 of 2020 in O.S.No.156 of 2012 on the file of III Additional District Judge, Salem.

For Petitioner : Mr.T. Sundaravadanam

For RR 1&2 : Mr. R. Babu

For R3 : No Appearance :



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ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 31.07.2020 made in I.A.No. 3 of 2020 in O.S.No.156 of 2012 on the file of III Additional District Judge, Salem.

2. The learned counsel for the petitioner/1st defendant contended that the petitioner herein is the 1st defendant in the suit proceedings and he was suffering from urinary track infection and could not attend before the Court below for examination of his evidence. Since the case was posted as finally for cross examination of DW1 on 03.02.2020, the cross examination of DW1 was closed by the Court below. He further submitted that I.A.No.3 of 2020 was filed to recall DW1 for the purpose of cross examination. However, the Court below had erroneously dismissed the said application without appreciating the above fact. Therefore, he prays to set aside the findings of the Court below.



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3. Per contra, the learned counsel for the respondents 1 & 2/plaintiffs contended that the DW1 has not present for his cross-examination in spite of several opportunities were already granted but the petitioner/1st defendant have not taken any steps to cross examine the DW1 and hence, the cross examination of DW1 was closed on 03.02.2020. Therefore, the Court below had rightly dismissed the said application. Hence, he prays to dismiss the above revision.

4. Heard the learned counsel for the revision petitioner/first defendant and the learned counsel for the respondents 1 & 2/plaintiffs and perused the materials available on record.

5. On a perusal of the records, it is seen that the 1st respondent/1st plaintiff (since deceased) has filed the suit in O.S.No.156 of 2012 before the learned III Additional District Judge, Salem, for partition. During the pendency of the suit proceedings, the petitioner has filed I.A.No. 3 of 2020 under Order 18 Rule 17 of CPC., seeking to recall DW1 for the purpose of cross examination. After perusing the records, the Court below dismissed



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the said application by order dated 31.07.2020 on the ground that "no proper reason" was assigned by the petitioner. Challenging the same, the petitioner has preferred this revision.

6. On a further perusal of the records, it reveals that the petitioner/1st defendant was suffered by urinal track infection for more than a year and on 03.02.2020, he was affected by severe temperature and therefore, he could not appear before the Court below for his cross examination. The suit was posted for cross examination of DW1 on 03.02.2020 finally, but the same was closed by the Court below. However, DW1 has already cross examined in part and the petitioner/1st defendant has deposed in his cross-examination that the original copy of Ex.A7 was available with him and he was ready to produce the original copy of Ex.A7 before the Court below on the date of next hearing. On 03.02.2020, DW1 has not present for cross examination in spite of sufficient opportunities were already granted as stated earlier and therefore, the cross examination of DW1 was closed on 03.02.2020. Immediately, thereafter, the application has been filed for recall of DW1.



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It is very clear that the petitioner/DW1 was partly cross-examined on 25.10.2019 before the dates mentioned in the documents filed by the petitioner and for his continuation of cross-examination was closed on 03.02.2020. Further, the same was objected to by the 1st respondent/1st plaintiff's side, the recall petition was not filed with the original document for Ex.A7 as he was admitted during his cross examination. However, in order to prove his case, the petitioner/1st defendant has produced his medical reports stating that he was suffering from "Concentric left ventricular hypertrophy, Grade II diastolic dysfunction, Normal LV systolic function, Mitral regurgitation trivial, no pulmonary hypertension and no pericardial effusion and Cystoscopy done, Right ureteric catheter placed, Prone position, MD lateral calyx puncture made and tract dilated, Mini nephroscopy done, and 2 cm pelvic cal with surrounding mucosal edema, Narrow PUJn, Stone completely fragmented and retrieved, DJS done, Nephrostomy done, Bladder catheterized". Therefore, the genuine reason was assigned properly by the petitioner/1st defendant before the Court below, but the Court below has failed to appreciate the above fact.



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7. Considering the facts and circumstances of the case and the fact remains that DW1 has been partly cross-examined and also in the interest of justice, this Court is inclined to allow the above revision.

8. In view of the above.-

(i) The Civil Revision Petition is allowed. The order passed in I.A.No.3 of 2020 in O.S.No.156 of 2012 by the learned III Additional District Judge, Salem, is set aside, on condition that the revision petitioner shall pay costs of **Rs.2,500/- [Rupees Two Thousand Five Hundred Only]** to the respondent's counsel directly within a period of two weeks from the date receipt of a copy of this order. There shall be no order as to costs. Consequently, connected C.M.P. No. 12282 of 2020 is closed.

06.12.2022

Index:Yes/No
Speaking order / Non speaking order
msm

To
1. The III Additional District Judge, Salem.



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2. The Section Officer, High Court, Madras.

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V.BHAVANI SUBBAROYAN, J.

msm

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