



WEB COPY



C.R.P. (PD) .Nos.2258 and 2259 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).Nos.2258 and 2259 of 2021

and

C.M.P.No.17147 of 2021

- 1.Amalameri
 - 2.Baskar @ Mariaselvam
 - 3.Sagayanathan
 - 4.B.Sunilkumar
 - 5.Minor Santheeb
- Rep. by his father Sagayanathan

.. Petitioners in both the CRPs

Vs.

- 1.Gnanamani
- 2.Baby Parimala
- 3.Thangamani

.. Respondents in both the CRPs

Page No.1/6



C.R.P. (PD) .Nos.2258 and 2259 of 2021

PRAYER in both the CRPs: Civil Revision Petitions filed under Article 227 of the Constitution of India, praying to allow these Civil Revision Petitions and set aside the order dated 09.04.2021 made in I.A.Nos.3 and 4 of 2020 in O.S.No.15 of 2011 on the file of the learned Subordinate Judge, Ranipet.

For Petitioners : Mr.G.Jeremiah in both the CRPs

For Respondents : Mr.N.Manokaran for R1 in both the CRPs
R2 and R3 – given up.

ORDER

Challenge in these Revisions is to the order of the trial Court dismissing the applications filed by the defendants to re-open the evidence of DW2 and to re-call her to subject her for cross-examination.

2. The suit in O.S.No.15 of 2011 is one for partition. The defendants let in evidence. DW2 was examined in chief on 04.12.2018 and the suit was adjourned to 15.02.2019 and 25.02.2019 for cross-examination of DW2. Since DW2 was not present, her evidence was closed and the suit was posted for arguments.

3. Thereafter, the defendants filed the applications in I.A.Nos.1 and 2



C.R.P. (PD) .Nos.2258 and 2259 of 2021

of 2019 to re-open the case to let in evidence and to permit them to examine

WEB C

DW3. Those applications were allowed and DW3 was examined and cross-examination was also done. Thereafter, i.e. after the completion of cross-examination of DW3, the defendants came up with the instant application seeking to re-open the evidence of DW2 and to re-call her and enable her to submit herself for cross-examination.

4. The learned trial Judge dismissed the applications for the reason that the defendants did not seek for re-opening the evidence of DW2 before summoning DW3.

5. Mr.G.Jeremiah, learned counsel appearing for the petitioners would contend that the Court must have offered an opportunity to the parties to let in evidence. DW2 was examined in chief and as she could not appear for two hearings because of her age, the evidence was closed. The subsequent examination of DW3 and cross-examination of DW3 would not in any way prevent DW2 from offering herself for cross-examination so that her evidence is not struck off.

6. Mr.N.Manokaran, learned counsel appearing for the respondents



C.R.P. (PD) .Nos.2258 and 2259 of 2021

would submit that the provisions of Order XVIII Rule 17 of the Code of Civil Procedure though enable recall, cannot be allowed to be mis-used by unscrupulous elements. According to him, the present attempt is only to delay the proceedings and to fill up the lacuna.

7. I am unable to concur with the submission of the counsel for the respondents. The re-opening and recalling of DW2 is sought for only for the purpose of cross-examination. Therefore, I do not think there can be any filling up of lacuna by the defendants. After all the evidence of DW2 is already on record and only her cross-examination has not been done. If cross-examination is not done, the evidence of DW2 would be of no use. I do not think that the Court must shutout the opportunity to the defendants to lead evidence particularly when they offer to do so. After all the Courts are there to do justice and the Court cannot afford to put the technical considerations ahead of substantial justice and deny opportunity for letting in evidence.



C.R.P. (PD) .Nos.2258 and 2259 of 2021

8. In the case on hand, I do not see any prejudice being caused to the respondents by allowing the applications, inasmuch as what is sought to be done is only cross-examination of DW2. I am therefore, unable to concur with the trial Court that the defendants should have sought reopening for cross-examination earlier in point of time. The defendants would have done well, if they have sought for cross examination of DW2 before summoning DW3, but that by itself would not be a bar for letting in evidence.

9. The revisions are **allowed** and the applications in I.A.Nos.3 and 4 of 2021 will stand allowed. The evidence of DW2 is re-opened and DW2 is recalled. The trial Court shall fix date for cross-examination of DW2 and proceed further in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

12.01.2022

dsa
Index : No
Speaking order

Page No.5/6



WEB COPY



C.R.P. (PD) .Nos.2258 and 2259 of 2021

R.SUBRAMANIAN, J.

dsa

To

The Subordinate Judge, Ranipet.

C.R.P.(PD).Nos.2258 and 2259 of 2021

12.01.2022

Page No.6/6