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C.R.P.(PD).Nos.3017 & 2858 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2022

CORAM:

THE HONOURABLE MR. JUSTICE S. SOUNTHAR

C.R.P.(PD).Nos.3017 & 2858 of 2022

and

C.M.P.No.15472 of 2022

Rathinaraj (Late)

1.R.Abel Johnson

2.R.Yovel Selvaraj

3.R.James Paul

4.A.Ghanaselvi

5.R.Yowan Thangaraj

6.R.Rabakkal

... Petitioners in both C.R.Ps.

Vs

B.Vellaiyammal

... Respondent in both C.R.Ps.

Common Prayer: Civil Revision Petition filed under Article 227 of Indian Constitution, praying to set aside the fair and decretal order dated 26.07.2022, made in I.A.Nos.6 & 7 of 2022 in O.S.No.5674 of 2017, on the file of the learned XVI-Additional City Civil Court, Chennai.

For Petitioners in both C.R.Ps. : Mr.K.P.Chandrasekaran

For Respondent in both C.R.Ps. : Mr.K.Ashok Kumar

COMMON ORDER

These Civil Revision Petitions are filed challenging the order passed by the Court below dismissing the petition to re-open and recall PW1 and PW2 for



cross-examination.

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2.In support of the petition to re-open the case and to recall of PW1 and PW2, the Revision Petitioners averred that the case was contested by their father and he passed away in the year, 2015. The Revision Petitioners had no knowledge about the pendency of the suit. After receiving summons from the Court, they acquired knowledge about the case and hence, the Revision Petitioners may be given an opportunity to recall PW1 and PW2 and to cross-examine them so as to record certain vital points.

3.The respondent herein filed a detailed counter affidavit, wherein, they have stated, that after the death of the father of the Revision Petitioners, namely Rathinaraj, the Revision Petitioners were brought on record. Consequently, the Revision Petitioners cross-examined PW1 and PW2 extensively from 11.06.2018 to 18.09.2018 on various dates. It is asserted by the respondent in the counter that the Revision Petitioners herein were very well aware of the civil dispute after being brought on record, they themselves through their advocates cross-examined PW1 and PW2 extensively. Hence, it was stated that it is not open to them to say that they were not aware of the civil proceedings and just now they acquired knowledge about the suit and seek to recall of witnesses. The averments made by the Revision Petitioners in support of the petition to reopen and recall the witness appear to be a false averment. The Court below in the impugned order clearly observed that after petitioners were brought on record,



C.R.P.(PD).Nos.3017 & 2858 of 2022

they started cross examining plaintiff's side witnessess on 28.10.2016. Both

Pw1 and PW2 were cross examined fully and their cross examination was completed on 18.09.2018. The learned counsel for the petitioner was unable to demonstrate that the said observation of Court below is not correct. The Revision Petitioners suppressed the fact that they had already participated in the trial and cross-examined PW1 and PW2. Therefore, the Revision Petitioners are not entitled to exercise the discretion in their favour and I do not find any illegality and irregularity in the order passed by the Court below.

4.Accordingly, these Civil Revision Petitions are dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

28.09.2022

Index: Yes/no
Speaking/non-speaking
gba

To
XVI-Additional City Civil Court,
Chennai.



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C.R.P.(PD).Nos.3017 & 2858 of 2022

S.SOUNTHAR,J.

Gba

C.R.P.(PD).Nos.3017 & 2858 of 2022
and
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C.R.P.(PD).Nos.3017 & 2858 of 2022