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CRP (PD) No.2595 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S. KANNAMMAL

CRP (PD) Nos.2594 and 2595 of 2021
and CMP No.19229 of 2021

K.Mahadevan

... Petitioner in both C.R.Ps.

Vs

Raja Sir Annamalai Chettiar Trust,
by its Hereditary Trustee,
M.A.M.Ramasamy (Died)

Raja Sir Annamalai Chettiar Trust,
by its Hereditary Trustee,
M.A.M.Ramasamy (Died)
A.C.Muthaiah,
S/o.M.A.Chidambaram

... Respondents in both C.R.Ps

Prayer: The Civil Revision petitions filed under Article 227 of Constitution of India, against the fair and decretal order, dated 24.09.2021 in I.A.Nos.417 and 418 of 2021 in O.S.No.120 of 2010 on the file of the learned Additional District Munsif, Chidambaram.

For Petitioner
in both C.R.Ps. : Mr.M.Muthappan

For Respondent
in both C.R.Ps. : Mr.S.Sithirai Anandan



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COMMON ORDER

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The Civil Revision Petitions are filed against the orders made in I.A.Nos.417 and 418 of 2021 in O.S.No.120 of 2010, dated 24.09.2021 on the file of the learned Additional District Munsif, Chidambaram.

2. The suit in O.S.No.120 of 2010 was laid by the plaintiff/respondent herein before the learned Principal District Munsif, Chidambaram for recovery of possession of B Schedule property, recovery of arrears of rent and for future means of profits. Pending suit, the plaintiff has filed two applications in I.A.Nos.417 and 418 of 20221 in O.S.No.120 of 2010 before the trial Court to recall and reopen the evidence of DW1 for cross examination. The trial Court accepted the reasons assigned in the affidavit filed in support of the applications concluded that the plaintiff should have been given an opportunity to cross examine the defendant's witness. On the said conclusion, the learned trial Judge allowed the applications on condition that the plaintiff pays a sum of Rs.300/-, as costs for each application. It is aggrieved by this order, the defendant has come up with these revisions.



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3. I have heard Mr.K.Muthappan, learned counsel appearing for the petitioner and Mr.Mr.S.Sithirai Anandan, learned counsel appearing for the respondent in both Civil Revision petitions.

4. Mr.M.Muthappan, learned counsel appearing for the petitioner would vehemently contend that the suit is of the year 2010 and P.W.1 was cross examined on 08.06.2021 and 02.08.2021 and thereafter the suit was posted on various dates till 06.09.2021 for arguments. According to the petitioner, the filing of the two interlocutory applications are only to drag on the proceedings in the suit. The learned counsel would further contend that the affidavit filed by the respondent for recall and reopen the witness is vague and even there is no mention in the affidavit regarding the document which is going to be filed. The trial Court without considering the facts that no reasons have been stated in the affidavit for the delay in producing the documents, had simply allowed the petitions and hence the learned counsel prays for setting aside the orders passed by the trial Court.



5. Per contra, the learned counsel appearing for the respondent would submit that the documents which are sought to be marked through the defendant is essential for proper adjudication in this case and the trial Court after considering the facts and circumstances, had rightly allowed the applications and therefore no interference is called for. In support of his contention, the learned counsel for the respondent has filed an additional typed set of papers enclosing two letters dated 26.02.2007, out of which, he restricts his claim only to the first letter, dated 26.02.2007 which is a communication of the petitioner to the Advocate Commissioner. The learned counsel also relied on the following Judgments of this Court and the Hon'ble Supreme Court wherein the applications to recall and reopen the witness have been allowed:

1. AIR 1981 P & H 157 in Om Prakash Sapra and others
2. 1984 (2) SCC 354 in M.M.Amnokar Vs. Dr.S.A.Johari
3. AIR 1998 MAD 323 in S.S.S.Durai Pandian Vrs. S.a.Samuthira Pandian



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6. Considering the facts and circumstances of the case and the submissions made, this Court is of the opinion that once the reasons for producing the documents are accepted, automatically the plaintiff should be given an opportunity to restore the original position and he should be allowed to give an opportunity to cross examine the defence witness. The trial Court had rightly exercised its discretion in favour of the petitioner and allowed the applications and I do not think such exercise of discretion can be interfered with, particularly exercise of the power under Article 227 of the Constitution of India. The revisions are dismissed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

31.01.2022

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

To:
The Additional District Munsif, Chidambaram.



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S. KANNAMMAL, J.

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