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C.R.P (MD) Nos.2096 and 2097 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 01.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

C.R.P (MD) Nos.2096 and 2097 of 2021
and
CMP (MD) No.11130 of 2021

Esakki Mudaliyar

... Petitioner
in both petitions

Vs

Balasubramanian

... Respondent
in both petitions

PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, to allow these civil revision petitions by setting aside the fair and decreetal order dated 03.03.2021 made in I.A.Nos.1 and 2 of 2021 in O.S.No.250 of 2015 on the file of the Additional District Munsif Court, Tenkasi.

For Petitioner : Mr.A.Sivaji

For Respondent : Mr.T.S.R.Venkatramana

in both petitions



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COMMON ORDER

These civil revision petitions are filed as against the fair and decreetal order dated 03.03.2021 made in I.A.Nos.1 and 2 of 2021 in O.S.No.250 of 2015 on the file of the Additional District Munsif Court, Tenkasi.

2.The respondent/ plaintiff has filed a suit in O.S.No.250 of 2015 for declaration and permanent injunction. The plaintiff has taken out two interlocutory applications for reopening of the case and for examination of PW2, at the stage when the case was posted for arguments. The said applications were allowed by the trial Court. Aggrieved over the same, the petitioner has filed these two civil revision petitions.

3.The learned Counsel for the petitioner submits that the respondent has not stated any valid reason in the affidavit for filing the application for examining PW2- the Secretary of Melagaram Panchayat, after closing of evidence and the suit was posted for arguments. Further,



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these applications are filed after five years of filing of the suit, though he was having sufficient time earlier. Therefore there is no *bona fide* reason on the part of the plaintiff and laches on the part of the plaintiff in filing the application very belatedly and hence these petitions are not maintainable.

4.The learned Counsel for the respondent submits that as per Order 16 Rule 1 (3) of CPC any witness other than the names appear in the witness list, can be introduced, if sufficient cause is there for the omission to mention the name of such witness in the said list. Therefore the trial Court upon satisfaction of the reasons for examination of PW3 the Secretary of Melagaram Panchayat, has rightly allowed the applications.

5.The learned Counsel further submits that those applications were filed only to elicit certain facts through examination of PW3 and if the revision petitioner is aggrieved that those applications are filed in order to protract the trial, then the respondent is ready to confine



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his prayer not to insist upon the relief examination of PW2 and is ready to proceed with the suit based on the available advocate commissioner's report.

6.This Court has considered the rival submission and perused the materials placed on record.

7.These civil revision petitions are filed as against the order passed in I.A.Nos.1 and 2 of 2021 in O.S.No.250 of 2015 on the file of the Additional District Munsif Court, Tenkasi. These applications were filed for reopening of the suit and for examination of PW1 Secretary of Melagaram Panchayat for the purpose of marking plan approval granted to the defendant's house. The defendant's side evidence was closed on 04.01.2021 and suit was posted for arguments on 18.01.2021 and on 04.01.2021 itself those applications were filed for cross examination of PW1. Therefore, this Court does not find any reason to interfere with the orders passed by the trial Court.



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8.However the learned Counsel for the respondent / plaintiff has come forward that he is not insisting for examination of PW2 and the argument may commence and he will proceed with the arguments. In view of the submission of the learned Counsel for the respondent, these civil revision petitions are disposed of with a direction to the trial Court to proceed with the main suit with the available evidence and to conclude the same within a period of four weeks from the date of receipt of a copy of this order and the parties on either side shall extend their co-operation. No costs. Consequently connected miscellaneous petition stands closed.

01.07.2022

dsk

To
The Additional District Munsif,
Tenkasi.



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B.PUGALENDHI, J.

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