



C.R.P(PD).Nos.2477 and 2480 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.R.P(PD).Nos.2477 and 2480 of 2019
and C.M.P.No.16170 of 2019

Mohanraj

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

Vs.

1.Panneerselvam

Ramayee (deceased)

2.Lakshmi

3.Sureshkumar

4.Sudha

5.Kavitha

6.Karuppanna Gounder

7.Sankaran

[(Nos.6 and 7 respondents represented
by their power agent 1st respondent Panneerselvam
(Amended as per in I.A.No.325 of 2017
dated 10.10.2017)]

... Respondents in both C.R.Ps.



C.R.P(PD).Nos.2477 and 2480 of 2019

COMMON PRAYER: Petitions filed under Article 227 of the Constitution of India, seeking to set aside the fair and decreetal order dated 05.03.2019 made in I.A.Nos.425 and 426 of 2015 in O.S.No.338 of 2013 on the file of the Additional District Munsif Court, Namakkal.

For Petitioner : Mr.K.Ramanraj
For R1 : Mr.T.Dhanyakumar

COMMON ORDER

These revision petitions are preferred against the orders dismissing the applications of the plaintiff made in I.A.No.425 and 426 of 2015 in O.S.No.338 of 2013, which he had laid for declaring P.W.2 as hostile and recalling P.W.2 for cross examining on his side. This was opposed by the other side and by the order now under challenge the trial court dismissed it.

2.It is seen from the impugned order that P.W.2 who is an attesting witness to Ex.A7, under which the 5th defendant had settled the 2nd item of the suit property in favour of 3rd defendant, has in the course of his cross examination, has deposed against the plaintiff vis-a-vis the possession of the suit property. Therefore, the plaintiff vide I.A.Nos.425 and 426 of 2015



seeks to declare P.W.2 as hostile as regards his testimony regarding possession of the property concerned and to recall him for cross examination. This is negatived by the trial court.

3. There is a risk in accepting the logic behind these applications. The idea behind cross examining a witness is to discredit his version and one of the methods by which it is done is by eliciting certain admission. Merely because a witness has spoken to certain facts within his knowledge that *per se* cannot be a ground to treat the witness as hostile. This ought to have been done even when the witness is in the box. This apart, the plaintiff always had an opportunity to re-examine the witness to clarify certain ambiguity.

4. Given the nature of the applications made and the orders passed, this court does not find reason to interfere with the said orders.

5. Having held thus, this court understands that the property in question, in relation to which P.W.2 has testified to possession is an open land. In all such cases, the presumption is possession follows title. Therefore, evidence



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N.SESHASAYEE, J.

Anu

of an attesting witness vis-a-vis possession is a matter for appreciation for evidence in the context of the law applicable. This is another reason why this court does not consider it necessary to interfere with the orders.

6.These civil revision petitions stand dismissed accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

08.03.2023

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Index : yes / no

Internet : yes / no

Speaking / Non Speaking order

To.

The Additional District Munsif Court, Namakkal

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