



C.R.P.Nos.3696 and 3697 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.Nos.3696 and 3697 of 2023

and

C.M.P.Nos.23149 and 23151 of 2023

The Commissioner
Coimbatore Municipal Corporation
No.1, Big Bazaar Street, Town Hall
Coimbatore - 641 001.

... Petitioner in both CRPs

-Vs-

1.G.Sugavanam

2.S.Rani

... Respondents in both CRPs

Prayer in CRP No.3696 of 2023: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed by the II Additional District Munsif Court at Coimbatore in I.A.No.3 of 2023 in O.S.No.1063 of 2009.

Prayer in CRP No.3697 of 2023: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal



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order passed by the II Additional District Munsif Court at Coimbatore in

I.A.No.4 of 2023 in O.S.No.1063 of 2009.

For Petitioners : Mr.D.Ferdinand

ORDER

Challenging the impugned orders passed in I.A.Nos.3 and 4 of 2023 in O.S.No.1063 of 2009 on the file of II Addl. District Munsif, Coimbatore the Revision Petitioner/defendant preferred these Civil Revision Petitions.

2. Since the relief sought challenging the order passed by the trial judge, notice to the respondents is dispensed with.

3. Before the trial court, the plaintiffs filed a suit in O.S.No. 1063 of 2009 seeking for the relief of permanent injunction. The defendants have contested the suit by filing their written statement. During the pendency of trial proceedings, the defendant filed applications in I.A.Nos.3 and 4 of 2023 praying to scrap/struck off the D.W.1 evidence and to reopen defendant side evidence for the reason that the witness, who adduced



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evidence was transferred. Therefore, he prayed to scrap the earlier evidence and give them opportunity to adduce fresh evidence by examining the corporation official, who is working at present. The said application was objected by the plaintiffs stating that the suit was filed in the year of 2009 and the trial was commenced in the year of 2014. After that, D.W.1 was examined in the year of 2016, but he was not cross-examined. However, all these years due to non-appearance on their side, the evidence was closed and the case was posted for argument, at that time, the defendant filed the said applications, as such is not acceptable. Considering both side submissions, the trial judge held that though D.W.1 was transferred, he is still in service and hence, D.W.1's evidence need not be scrapped, besides the defendant also dragging the proceedings. Accordingly, the said applications were dismissed. Challenging the same, the defendant preferred these Civil Revision Petitions.

4. The learned counsel for Revision Petitioner would submit that D.W.1 was transferred in the year of 2017 and all these years, the new officer was holding the charge and maintaining the affairs. So, he is a right person to adduce evidence, as D.W.1 gave evidence much earlier five years



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back. But, without appreciating the said fact, the trial judge erroneously dismissed the applications. Hence, he prayed to set aside the said findings and also prayed to give one more opportunity.

5. Records perused. On perusal of the orders passed by the trial judge, it would reveals that the trial was begun in the year of 2014 and D.W.1 was examined in the year of 2016 and thereafter, he was not cross-examined and evidence was also closed subsequently. Admittedly, D.W.1 was transferred and a new officer is holding the charge of the office and he is a right person to give evidence, however, the person, who gave evidence was transferred five years back. So, to bring him for evidence is much complicated one rather the present officer, who is holding the office is eligible to give evidence. But, the trial judge failed to appreciate the said fact and erroneously dismissed the applications, which shows his non-application of judicious mind. Hence, the orders passed by the trial judge are liable to be set aside. Accordingly, these Civil Revision Petitions are allowed and the findings rendered by the trial judge in I.A.Nos.3 and 4 of 2023 in O.S.No.1063 of 2009 are set aside. Furthermore, as the D.W.1 was transferred, his evidence recorded in the year of 2016 is ordered to be



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recused by opportunity is to be given to the defendant. Therefore, the trial judge is directed to conclude the trial proceedings by permitting the defendant to give fresh evidence on its side and on such permission, the defendant is directed to cooperate with the trial proceedings. No costs. Consequently, connected civil miscellaneous petitions are closed.

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Index : Yes/No
Speaking Order : Yes/No
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To

The II Additional District Munsif, Coimbatore.



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T.V.THAMILSELVI, J.

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