



WEB COPY

1

CRP.Nos. 3287 & 3288 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2023

CORAM:

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

CRP.Nos. 3287 & 3288 of 2023

1.S.Kesavan

2.K.Balaji

... Petitioners
[in both CRPs]

Versus

1.D.Radhani

2.N.Malliga

3.A.Vijaya

...Respondents
[in both CRPs]

Civil Revision Petition No. 3287 of 2023 filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 09.08.2023 passed in I.A.No. 3 of 2023 in O.S.No. 5163 of 2020 on the file of VII Additional Judge, City Civil Court, Chennai.

Civil Revision Petition No. 3288 of 2023 filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 09.08.2023 passed in I.A.No. 2 of 2023 in O.S.No. 5163 of 2020 on the file of VII Additional Judge, City Civil Court, Chennai.

In both CRPs:

For Petitioners : Mr. S. Sadasharam

For Respondents : Mr. M. Jagadheesan
For M/s.P.B. Ramanujam for Caveator

**COMMON ORDER**

WEB COPY

These Civil Revision Petitions have been filed to set aside the fair and decretal order dated 09.08.2023 passed in I.A.Nos. 2 and 3 of 2023 in O.S.No. 5163 of 2020 on the file of VII Additional Judge, City Civil Court, Chennai.

2. The revision petitioners are the defendants and the respondents are the plaintiffs in the original suit proceedings.

3. On a careful perusal of the records, it is seen that the respondents/plaintiffs filed the suit in O.S.No. 5163 of 2020 before the VII Additional Judge, City Civil Court, Chennai, for declaration and permanent injunction. During the pendency of the suit proceedings, the petitioners/defendants filed I.A.No. 2 of 2023 under Section 151 of CPC., seeking to reopen the evidence of PW1 to let in evidence and I.A.No. 3 of 2023 filed under Order 18 Rule 17 of CPC., seeking to re-call the PW1 witness in the original suit. After perusing the records, the Court below dismissed the above applications by order dated 09.08.2023. Aggrieved by the said order, the petitioners/defendants have preferred the present

Revisions.



WEB COPY

4. The contention of the petitioners/defendants is that the respondents filed a suit in CS.No. 62 of 2015 against the petitioners seeking declaration with regard to the suit property and they had also filed a suit in CS.No. 330 of 2015 before this Court in respect of the very same property of which petitioner's son is the absolute owner. Both the suits were transferred and taken up for trial and common evidences were recorded in O.S.No. 5163 of 2020. Admittedly, the 1st plaintiff has been chosen to be examined as PW1 and Ex.A1 to Ex.A17 were marked. After completion of chief examination of PW1 cross examination of PW1 on behalf of the defendants had commenced. A part of the cross examination was over and the matter was posted for continuation of cross examination of PW1 on 06.06.2023. As the petitioner's counsel was not feeling well, he sought time to complete the cross examination but the evidence of PW1 was closed and the cases were posted to 15.06.2023. Since a lot of substantial evidence has to be brought on record, the evidence of PW1 has to be reopened and has to be recalled for continuation of cross examination of PW1. Hence, prayed that one more opportunity may be given to put forth their case before the Court below. Therefore, the petitioners prayed to set aside the findings of the Court below.

5. The contention of the respondents/plaintiffs is that several



opportunities were granted to cross examine the PW1 but the petitioners/defendants were not ready to get along with the proceedings instead they dragged on the proceedings and therefore, the plaintiffs side evidence was closed rightly by the Court below. While so, the petitioners have not stated any bona-fide/valid reasons so as to reopen and recall the PW1. Hence, the above Revisions are liable to be dismissed.

6. The learned counsel for the respondents/plaintiffs would that several opportunities were granted to the petitioners/defendants to let-in evidence but the petitioners have not come forward to file the above applications. The petitioners/defendants filed the above applications seeking to reopen the case, and to adduce evidence on behalf of PW1 after the cross examination was closed. The respondents/plaintiffs objected for reopening the evidence of PW1, since the above applications were filed only to drag on the proceedings for reopening the evidence of PW1.

7. It is seen that on 20.04.2022, the 1st plaintiff was examined as PW1 through chief examination and 17 exhibits were marked and thereafter, the matter was posted to 14.06.2022 for cross examination. Thereafter, the case was referred to mediation and the same had failed. On 06.06.2023, the



matter was listed for cross examination and the counsel for the petitioners again requested some accommodation and till 3.30 p.m. PW1 was not cross examined by them and eventually, the Court below had closed the evidence. Now, the petitioners have come up with applications for reopening the PW1 evidence and recalling the witness. When a part of the cross examination was over, the petitioners' counsel was not feeling well and then, the petitioners' counsel sought some accommodation to complete the cross examination, but the evidence of PW1 was closed and the matter was posted to 15.06.2023. Since a lot of substantial evidence has to be brought on record, the evidence of PW1 has to be reopened and has to be recalled for continuation of cross examination of PW1. However, the Court below had not granted sufficient opportunities to the petitioners counsel without considering the fact that he is a senior citizen and erroneously dismissed the applications.

8. Considering the relationship of the parties as well as the age of the counsel for the petitioner (senior citizen), this Court is inclined to give one more opportunity to the petitioners to reopen and recall the evidence on the side of the PW1 and other relevant documents if any to be filed before the Court below. After receiving all other documents, the trial Court is directed



to complete the cross examination without giving unnecessary adjournments only to the petitioners for cross-examination of PW1 and to complete the cross-examination of PW1 from 13.09.2023 to 19.09.2023.

9. Accordingly, this Civil Revision Petitions are allowed. The order dated 09.08.2023 passed in I.A.Nos. 2&3 of 2023 in O.S.No. 5163 of 2020 on the file of VII Additional Judge, City Civil Court, Chennai, is hereby set aside. The petitioners/defendants is directed to let-in evidence on behalf of PW1 and further, the trial Court is directed to dispose of the suit as expeditiously as possible. There shall be no order as to costs.

05.09.2023

MSM

To

1. The VII Additional Judge, City Civil Court, Chennai.
2. The Section Officer, V. R. Section, High Court of Madras.



WEB COPY



7

CRP.Nos. 3287 & 3288 of 2023

V.BHAVANI SUBBAROYAN, J

msm

CRP.Nos. 3287 & 3288 of 2023

05.09.2023