



C.R.P.No.3723 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2023

CORAM:

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

C.R.P.No.3723 of 2023
and
C.M.P.No. 23246 of 2023

1. Deivanai
2. V.Mallika

... Petitioners

-Vs-

1. B.Ramalingam
2. M.D.Thilagavathi

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order and decreetal order dated 09.06.2023 made in I.A.No.4 of 2023 in O.S.No.4585 of 2019 on the file of XI Asst. City Civil Court, Chennai.

For Petitioners

: Mr.Suchit Anant Palande

ORDER



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Challenging the impugned order passed in I.A.No.4 of 2023 in O.S.No.4585 of 2019 by the learned XI Asst. City Civil Judge, Chennai, the Revision Petitioners/defendants 1 and 3 preferred this Civil Revision Petition.

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

3. Before the trial court, the respondents/plaintiffs filed a suit in O.S.No. 4585 of 2019 against the defendants for the relief of permanent injunction in respect of the suit property. In that suit, the Revision Petitioners/defendants 1 and 3 contested the case by filing their written statement. Now, the suit is ripe for trial and P.W.1 was cross-examined by the defendants 1 and 3, but not fully, however, the trial judge closed the evidence. Therefore, they have filed an interlocutory application to recall P.W.1, since because only formal cross-examination was done at the earlier stage. But, the trial judge dismissed the application stating that P.W.1 was elaborately cross-examined by D.W.1, so, there is no necessity to recall P.W.1. Challenging the said findings, the defendants 1 and 3 preferred this Civil Revision Petition.

4. The learned counsel for Revision Petitioner would submit that 1st



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Revision Petitioner is aged about 75 years, however, she wanted to contest the case, since because she is having valid defence. On the date of P.W.1 examination, they have conducted only formal proceedings and in respect of marking documents, she wanted to cross-examine P.W.1, but the trial judge without considering the said contentions, dismissed the application. Hence, they prayed to set aside the findings of trial judge.

5. Considering facts and circumstances of the case and on perusal of records, it would reveals that the suit was filed in the year of 2019 and both plaintiffs and defendants are aged more than 70 years old and senior citizens and now the trial was begun, if opportunity is not given to them to cross-examine P.W.1 elaborately before the trial court, their valuable right to defend the case will be defeated. Moreover, on a bare perusal of cross-examination annexed in the typed set of papers at page No.44, nearly 1 ½ page only, the cross-examination was conducted and still they wanted to cross-examine P.W.1 further. Hence, the reasons assigned by the Revision Petitioners is justifiable one, but the trial judge erroneously dismissed the application, which is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the order passed by the trial judge in I.A.No.4 of 2023 in O.S.No.4585 of 2019 is set aside and the said application is



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ordered to be allowed. The Revision Petitioners are directed to cooperate with the trial proceedings by cross-examining P.W.1 at the earliest point of time. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

30.10.2023

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

XI Asst. City Civil Judge,
City Civil Court, Chennai.



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T.V.THAMILSELVI, J.

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