



CRP No.2919 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.2919 of 2017  
and CMP.No.13781 of 2017

1.B.Dayalan  
2.B.Nagammal

..Petitioners

Vs.

1.B.Balaji  
2.G.K.Kumar  
3.M.Sugunabai  
4.D.Vijayan

..Respondents

**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 23.01.2017 made in I.A.No.1095 of 2016 in I.A.No.102 of 2016 and I.A.No.597 of 2016 in O.S.No.448 of 2014 on the file of the District Munsif-cum-Judicial Magistrate, Sriperumbudur, Kancheepuram District, and allow the civil revision petition.

For Petitioners : Mr.D.Praveen Kumar

For Respondents

For R1 to 3 : Mr.D.Vijayan

For R4 : Notice served

**ORDER**

The civil revision petition has been filed as against the fair and decreetal order dated 23.01.2017 made in I.A.No.1095 of 2016 in I.A.No.102 of 2016



and I.A.No.597 of 2016 in O.S.No.448 of 2014 on the file of the District Munsif-cum-Judicial Magistrate, Sriperumbudur, Kancheepuram District, thereby dismissing the petition filed to reject the common counter affidavit filed by the counsel on record.

2. The petitioners are the defendants in the suit filed by the respondents for permanent injunction. Pending the suit, the petitioners filed an application to raise preliminary issues. In the said applications, the respondent filed a common counter affidavit signed by their counsel on record. Therefore, the petitioner filed an application to reject the common counter affidavit filed by the counsel for the respondent on record.

3. A perusal of the said common counter filed by the respondents revealed that the common counter was not filed in the form of affidavit. It can be filed by the counsel on record as he is duly authorized under Order 3 Rule 2 CPC. Therefore, the Court below rightly rejected the application holding that it is nothing but only to drag on the proceedings the petitioners filed the present applications. Therefore, this Court finds no infirmity or illegality in the order passed by the Court below and the civil revision petition is liable to be dismissed.



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4. Accordingly, the civil revision petition stands dismissed. The trial Court is directed to dispose of the application filed by the petitioners for framing the issues within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

20.01.2023

Speaking/Non-speaking order

Index : Yes/No

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To

District Munsif-cum-Judicial Magistrate,  
Sriperumbudur,  
Kancheepuram District.



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**G.K.ILANTHIRAIYAN.J,**

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