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C.R.P.Nos.3764 & 3766 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

CORAM : JUSTICE N.SESHASAYEE

C.R.P.Nos.3764 & 3766 of 2019
and CMP.No.24747 of 2019

C.Kasthuri Ammal (Died)
Anandhan

.. Petitioner in both CRPs / Petitioner
/ Defendant

Vs

K.Balaji

.. Respondent in both CRPs /
Respondent / Plaintiff

Common Prayer: Civil Revision Petitions filed under Article 227 of Constitution of India praying to set aside the fair and decretal order dated 06.07.2019 made in I.A.No.2 of 2019 in O.S.No.112 of 2007 and I.A.No.3 of 2019 in O.S.No.112 of 2007 on the file of IV Additional District Judge, Thiruvallur at Ponneri.

For Petitioner : Mr.A.E.Ravichandran
(in both CRPs)

For Respondent : No appearance
(in both CRPs)



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COMMON ORDER

These revisions are preferred by the defendant in O.S.No.112 of 2007, challenging the order passed by the trial Court on 06.07.2019 in I.A.No.2 of 2019 and I.A.No.3 of 2019, for reopening the plaintiff's side evidence and to recall P.W.1 for cross examination.

2. The facts that provide a backdrop for these revisions may be stated as below :

- The suit is laid for specific performance of a sale agreement against the mother of the revision petitioner in O.S.No.112 of 2007 before the Principal District Court, Thiruvallur. The suit was contested by the sole defendant.
- The matter went to trial. The plaintiff has tendered his evidence, and his evidence was closed, whereinafter, the defendant had filed his affidavit of chief examination. At this juncture, the suit came to be transferred from the Principal District Court, Thiruvallur to the newly constituted IV Additional District Court, Ponneri.
- According to the revision petitioner, there was no intimation to the



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mother of the revision petitioner about the transfer of the suit, but the transferee Court proceeded to pass an ex parte decree.

- In the meantime, the mother of the revision petitioner / the sole defendant in the suit died, and the revision petitioner came to be impleaded as her legal representative. After the ex parte decree was set aside, the revision petitioner filed his written statement, wherein he has supplemented some facts without altering the core defence taken by his mother.
- Now in the context of this additional facts which are now found place in the pleadings, the defendant requires further cross examination of P.W.1. For this purpose, he took out above referred two applications in I.A.No.2 of 2019 and I.A.No.3 of 2019, to reopen the plaintiff's side evidence and to recall P.W.1 for further cross examination, and the Courts below dismissed the said applications. This is now in challenge.

3. When the matter came up before this Court on 13.06.2023, this Court has recorded that though the respondent had entered caveat and the name of the counsel for the caveator was also printed in the cause-list, there was no



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representation. Hence, the matter came to be posted today. Even today, there is no representation for the caveator.

4.1 This Court perused the records and finds that an opportunity can be granted to the second defendant / revision petitioner. After all, the trial Court is the first Court of facts, and unless it is demonstrated that a litigant has exhibited a recalcitrant, indicates a tendency to abuse judicial process, optimum accommodation may have to be made to collect evidence.

4.2 This Court chooses to allow both the revision petitions, and the impugned order of the trial Court dated 06.07.2019 made in I.A.No.2 of 2019 and I.A.No.3 of 2019 in O.S.No.112 of 2007, are hereby set aside. Accordingly, P.W.1 is recalled, and as and when P.W.1 appear, the revision petitioner / second defendant shall not take time to cross-examine him, and shall complete the cross-examination on the same day. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Speaking Order / Non-speaking Order



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ds
To:

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- 1.The IV Additional District Judge
Thiruvallur @ Ponneri.
- 2.The Section Officer
VR Section, High Court, Madras.



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N.SESHASAYEE.J.,

ds

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