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C.R.P.Nos.3693 & 3695 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.Nos.3693 & 3695 of 2019

and

C.M.P.No.24290 of 2019

1.Palaniammal

2.Devarasu

.. Petitioners
in both petitions

vs

1.Shanmugasundari @ Kanaka

2.V.Palanisamy

.. Respondents
in both petitions

Prayer in CRP No.3693 of 2019: Petition filed under Section 115 CPC to set aside the order dated 16.08.2019 passed in IA No.4 of 2019 in O.S.No.155 of 2012 on the file of Principal District Munsif Court, Tiruchengode and allow the petition seeking to recall the 1st petitioner as witness DW3.

Prayer in CRP No.3695 of 2019: Petition filed under Section 115 CPC to set aside the order dated 16.08.2019 passed in IA No.3 of 2019 in O.S.No.155 of 2012 on the file of Principal District Munsif Court, Tiruchengode and allow the petition seeking to recall the 1st petitioner as witness DW3.

For Petitioners : Mr.S.N.Subramani
(in both CRPs)

For Respondents : Mr.Kaushik Narayanan
for Mr.V.K.Vijaya Raghavan
(in both CRPs)



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COMMON ORDER

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The defendants are the petitioners before this Court. These civil revision petitions arise as against the dismissal of applications to re-open and to re-call evidence of the defendants.

2. O.S.No.155 of 2012 was originally presented as O.S.No.116 of 2012 on the file of the vacation Court at Namakkal. Subsequently, it was transferred and re-numbered as O.S.No.155 of 2012 on the file of the District Munsif Court, Thiruchengode.

3. Learned counsel on either side would submit that due to bifurcation of jurisdiction and creation of new court at Kumarapalayam, the suit is now pending before the learned District Munsif Court, Kumarapalayam.

4. In the suit for bare injunction, the second defendant entered and filed a written statement on 05.10.2012. D1 and D3 engaged a fresh counsel and filed the written statement in the year 2014. D3 entered the witness box and filed a proof affidavit stating he is deposing on behalf of the first and third defendant. After his cross examination was over, learned counsel for the respondents



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would bring to my notice that DW2 was examined. However, he did not turn up for cross examination and therefore his evidence was eschewed. Thereafter, two other witnesses were examined, who learned counsel for the respondents would submit have made admissions in his favour.

5. At that stage, applications in I.A.Nos.3 and 4 of 2019 were taken up to re-open and to re-call evidence of the defendant in order to examine the first defendant Tmt. Palaniammal. The said applications were dismissed on the ground that it was intended to cause delay to the proceedings and also in order to fill up lacunae in the same.

6. Heard Mr.S.N.Subramani, learned counsel for the petitioners and Mr.Kaushik Narayanan, learned counsel for the respondents.

7. I have carefully examined the records and the submissions made on either side.

8. The suit is only for permanent injunction and it is not a suit for title. The narration of the facts show that the defendant



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have played to some extent in attempting to drag on the proceedings. However, with some earnest, they have come forward presently to examine the first defendant. The question of filling up of lacunae would arise if a decree had been passed in favour of the plaintiff. As long as the suit is open, it is always open to either party to let in evidence in order to project the best possible case that they can before this Court. Therefore, I am not inclined to dismiss these two revision petitions on the ground of attempting to fill up the lacunae or on the grounds of delay.

9. Nonetheless, I have to take into consideration the hardship that has been caused to the plaintiff on account of the pendency of the suit from the year 2012. While allowing I.A.Nos. 3 and 4 of 2019, I am inclined to impose costs for the hardships caused to the plaintiff and also fix a time limit before which the proceedings should be concluded. Therefore, C.R.P.Nos. 3693 & 3965 of 2019 stand allowed on the following conditions:-

- (i) the defendants shall pay to the plaintiffs a sum of Rs.7,500/- each for allowing I.A.Nos. 3 and 4 of 2019;
- (ii) the said cost must be paid on or before 18.09.2023. If the cost is not paid, the civil



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revision petitions will stand dismissed.

(iii) If on 19.09.2023, the defendants produce a receipt to show that they have paid the amount to the plaintiffs, then the learned Judge is requested to commence the evidence of the first defendant on that date itself and close the same, including the cross-examination on or before 22.09.2023. The matter shall go on day-to-day basis and the learned Judge is requested to pronounce the judgment in the suit on or before 30.11.2023.

10. With the above direction, the civil revision petitions stand allowed. The trial Judge is requested to act on the web copy of the order. He need not insist on a certified copy of the same. No costs. Connected miscellaneous petition is closed.

28.08.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

Note to Registry : Upload forthwith.



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V. LAKSHMINARAYANAN,J.

ssm

To

- 1.The District Munsif Court, Thiruchengode.
- 2.The District Munsif Court, Kumarapalayam.

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