



C.R.P.No. 4339 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE T.V.THAMILSELVI

C.R.P.No. 4339 of 2023

and

C.M.P.No.26370 of 2023

Kalichamy

.. Petitioner

Vs

Krishnasamy @ Kittusamy

.. Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and final order dated 10.08.2023 made in E.A.No.1 of 2022 in E.P.No.140 of 2012 in O.S.No.1638 of 1999 on the file of First Additional District Munsif Court, Coimbatore.

For Petitioner : Mr. V. Anandhamoorthy

ORDER

This Civil Revision Petition is filed challenging the impugned order passed in E.A.No. 1 of 2022 in E.P.No. 140 of 2012, the first judgment debtor has preferred this revision.



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2. Before the trial Court, the plaintiff / respondent herein obtained decree of injunction against the defendants / revision petitioner herein, as he violated, he filed EP for arrest. During the pendency of the EP proceeding, the judgment debtor / the first respondent filed application to cross examine P.W.1. That application was dismissed by the trial Judge holding that subsequent event cannot be ask from the P.W.1. Aggrieved by the said finding, the first defendant has preferred this revision.

3. The learned counsel for the petitioner / first defendant submits that after ex parte decree in the present suit, he filed a suit for partition in O.S.No.271 of 2011, in that suit the present plaintiff also contested and to prove the same, he wants to recall P.W.1.

4. Admittedly, both petitioner and respondent herein are brothers. From the year 1999 the suit is pending between them. If opportunity is not given to the revision petitioner, his valuable right to defend the case will be defeated but the trial Judge erroneously dismissed the application, which needs interference.



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5. Accordingly, the Civil Revision Petition is allowed. The fair

and final order passed in E.A.No.1 of 2022 in E.P.No.140 of 2012 in

O.S.No.1638 of 1999 is set aside. The revision petitioner / first defendant is directed to cooperate for the trial proceeding. No costs. Consequently, connected miscellaneous petition is closed.

08.12.2023

Index :Yes/No

Neutral Citation :Yes/No

AT

To

The I Additional District Munsif Court, Coimbatore.



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T.V.THAMILSELVI, J.

AT

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