



C.R.P.(PD)(MD).Nos.1091 and 1092 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD)Nos.1091 and 1092 of 2011

and

M.P(MD) No.1 of 2011 and C.M.P(MD) No.8063 of 2018

in

C.R.P(MD) No.1091 of 2011

C.R.P(PD)(MD) No.1091 of 2011:

M.A.Sudhakar
S/o.M.S Anantha Pathmanaban
(State Representative,
Tamil Nadu Hindu Temple Protection Committee)
Door No.122/198, Naicker Puthu Street,
Madurai, Madurai District.
(Petitioner for himself and on behalf of
Thoothukudi Sankara Rameswarar Kovil
Devotees and users of Mela Ratha Street)

... Petitioner /Petitioner/Plaintiff

-VS-

1. Thoothukudi Municipal
Represented by its Commissioner,
W.G.C Road,
Thoothukudi Municipal,
Thoothukudi District.



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2. The Junior Officer,
Sankara Rameswarar Kovil,
Sivan Kovil Street,
Thoothukudi.

3. T.A.Theiva Nayagam

4. T.A.Sankar (died)

5. Petchiammal

6. Subbiya Pillai

(R5 and R6 exonerated, vide Court order
dated 23.11.2017, made in C.M.P(MD)

No.10390 to 10395 of 2017 in C.R.P.(MD) No. 1092 of 2011)

7. Ponnammal

8. Chellammal

9. Raj Pattar (Died)

10. Mariappan

... Respondents/Respondents/
Defendants

11. S.Logambal

12. S.Arumugam

13. S.Soma Sundari

14. S.Siva Sangari

(Respondents 11 to 14 are brought on record as
Lrs of the deceased 4th respondent, vide Court order
dated 23.11.2017 made in C.M.P(MD) No.10390
to 10392 of 2017)

15. R.Selvam Pattar

(15th respondent is brought on record as
LR of the deceased 9th respondent vide
Court order dated 22.02.2022 made in C.M.P
(MD)Nos.10123, 10124 and 10125 of 2017
in C.R.P(MD) No.1091 of 2011)

... Proposed Respondents



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PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the Fair and decretal order, dated 22.11.2010 passed in I.A.No.2121 of 2010 in O.S.No.353 of 2007 on the file of the Principal District Munsif Court, Thoothukudi.

For Petitioner : Mr.V.Meenakshi Sundaram
for Mr.D.Nallathambi

For Respondents : Mr. N.Anand Kumar – for R1
: Mr.H.Arumugam – for R2
: Mr. C.Dhanaseelan – for R3 & R11 to R14
: No appearance – R4 to R10

C.R.P(PD)(MD) No.1092 of 2011:

M.A.Sudhakar
S/o.M.S Anantha Pathmanaban
(State Representative,
Tamil Nadu Hindu Temple Protection Committee)
Door No.122/198, Naicker Puthu Street,
Madurai, Madurai District.
(Petitioner for himself and on behalf of
Thoothukudi Sankara Rameswarar Kovil
Devotees and users of Mela Ratha Street)

... Petitioner /Petitioner/Plaintiff

-vs-

1. Thoothukudi Municipal
Represented by its Commissioner,
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2. The Junior Officer,
Sankara Rameswarar Kovil,
Sivan Kovil Street,
Thoothukudi.

3. T.A. Theiva Nayagam

4. T.A.Sankar (died)

5. Petchiammal

6. Subbiya Pillai

(R5 and R6 exonerated, vide Court order
dated 23.11.2017, made in C.M.P(MD)

No.10390 of 2016 in C.R.P.(MD) No. 1092 of 2011)

7. Ponnammal

8. Chellammal

9. Raj Pattar (Died)

10. Mariappan

... Respondents/Respondents/
Defendants

11. S.Logambal

12. S.Arumugam

13. S.Soma Sundari

14. S.Siva Sangari

(Respondents 11 to 14 are brought on record as
Lrs of the deceased 4th respondent, vide Court order
dated 23.11.2017 made in C.M.P(MD) No.10393
to 10395 of 2017)

15. Selvam Pattar

(15th respondent is brought on record as
LR of the deceased 9th respondent vide Court
order dated 22.02.2022 made in C.M.P (MD)
Nos.10126, 10127 and 10128 of 2017
in C.R.P(MD) No.1092 of 2011)

... Proposed Respondents



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PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the Fair and decretal order, dated 22.11.2010 passed in I.A.No.2122 of 2010 in O.S.No.353 of 2007 on the file of the Principal District Munsif Court, Thoothukudi.

For Petitioner : Mr.V.Meenakshi Sundaram
for Mr.D.Nallathambi

For Respondents : Mr. N.Anand Kumar – for R1
: Mr.H.Arumugam – for R2
: Mr. C.Dhanaseelan – for R3 & R11 to R14
: No appearance – R4 to R10

COMMON ORDER

The present Civil Revision Petitions have been filed challenging the order passed by the Principal District Munsif Court, Thoothukudi rejecting the applications for reopening the defendants side witness and to recall D.W-3 for further cross-examination.

2. The revision petitioner is the plaintiff. He had filed a suit for recovery of possession contending that the suit property is the temple property and the defendants 3 to 10 are the encroachers in the said property.



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The defendants side evidence was closed and when it was posted for arguments on 21.10.2010, I.A.No.2121 of 2010 was filed to reopen the defendants side evidence and I.A.No.2122 of 2010 was filed to recall D.W-3 for further cross-examination.

3. In the affidavit filed in support of the above said petitions, the plaintiff had contended that some important questions were left to be posed in the cross-examination of D.W.3 and hence, they wanted to recall DW-3 for further cross-examination. The defendants have filed a counter contending that the plaintiff is attempting to fill up the lacuna and they have filed the applications belatedly in order to drag on proceedings, when the suit was posted for arguments.

4. The learned trial Judge without considering the said applications on merits, has proceeded on the ground that the recall application, namely, I.A.No.2122 of 2010 has been filed under Order 18 Rule 17 of C.P.C. According to the learned trial Judge, the said provision of law empowers only the Court to recall any witness for examination or cross-examination, and it does not empower a party to the proceedings to recall a witness. Based upon



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the technical ground, both the applications have been dismissed by the trial Court. Challenging the same, the present Civil Revision Petitions have been filed.

5. According to the learned counsel appearing for the revision petitioner, even assuming that the said provision is not applicable, quoting of a wrong provision of law would not disentitle the party from getting a relief, if the Court otherwise feels that the party is entitled to the said relief. Therefore, the applications should have been considered on merits and orders should have been passed.

6. Per contra, the learned counsel appearing for the respondents had contended that the suit is of the year 2007 and the present applications have been filed belatedly when the suit was posted for arguments.

7. I have carefully considered the submissions made by the learned counsel on either side and perused the material on records.



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8. No doubt, the plaintiff had filed I.A.No.2122 of 2010 under Order 18 Rule 17 of C.P.C for recalling D.W-3, for the purpose of further cross-examination. This Court is not inclined to go to the said issue whether an application for recalling D.W.3 for the purpose of cross-examination falls within purview of under Order 18 Rule 17 of C.P.C., or not. Even assuming that the said provision is not applicable, mere wrong quoting of provisions of law would not disentitle, the plaintiff from agitating his rights, if the application is decided otherwise on merits.

9. In view of the above said deliberations, this Court finds that a chance should be given to the plaintiff to recall D.W.3 and to conduct further cross-examination. However, the said opportunity should not be utilized by the defendants to drag on the proceedings. Further, cross examination of D.W3 shall be completed within the **first week of August 2023**. Thereafter, the parties should co-operate and make submissions for completing the trial on or before **30.10.2023**.



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10. With the above said observations, both the Civil Revision Petitions stand allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

14.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Principal District Munsif Court,
Thoothukudi.



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R.VIJAYAKUMAR,J.

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