



CRP(PD)(MD)No.37 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.01.2013

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.37 of 2023
and CMP(MD)No.225 of 2023

Karuppayee Ammal (died)

Jeyakanthan (died)

Jeyakumar (died)

1. Jeganathan

2. Panchatcharam (died)

3. Jeyaraj

4. Jeyabalan

5. Jayalakshmi

6. J.Nagarathnam

7. J.Rajakumari

8. J.Saravanakumar

9. J.Senthilkumar

10. P.Jeyapradha

11. Minor P.Viswajith

12. Minor P.Navya

(Minors are represented through
their mother 10th petitioner

P.Jayapradha)

13. J.Jeyalakshmi

14. J.Malathi

15. J.Sivapriya

16. J.Kandhavel

17. P.Shanthi

18. P.Suganya



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19. P.Suriyakumar
20. P.Vinothkumar
21. J.Ranjani
22. Senthilkumari
23. Jansikumari
24. C.Udayakumari
25. S.Anbarasakumari
26. R.Viveka
27. P.Sobhiya

... Petitioners

versus

A.Krishnamoorthy (died)
Leela Krishnamoorthy (died)
1. Lakshmi Vaidhyanathan
2. P.Divya
3. Alamelu Baskaran
(R3 is represented through
her power agent N.Chandrasekaran)

... Respondents

Civil Revision Petition filed under Article 227 of Constitution of India, against the order dated 16.11.2022 made in I.A.No.894 of 2022 in O.S.No.225 of 2002 on the file of the Principal District Munsif Court, Madurai Town.

For Petitioners : Mr.M.Thirunavukkarasu

ORDER

This Civil Revision Petition is filed as against the order dated 16.11.2022 made in I.A.No.894 of 2022 in O.S.No.225 of 2002 on the file of the Principal District Munsif Court, Madurai Town.



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2. The petitioners are plaintiffs in O.S.No.225 of 2002 pending on the file of the Principal District Munsif Court, Madurai. They filed the above suit for permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit property. Though the suit was filed in the year 2002, it was decreed *ex parte* in the year 2007 and re-opened in the year 2012 and thereafter, the trial has also commenced only in the year 2021. After the plaintiffs side evidence was over, D.W.1 was examined on 05.07.2022 and thereafter, on 13.07.2022, D.W.1 was cross examined in part by the plaintiffs and for continuation of cross, it was adjourned to 22.07.2022. Subsequently, the case was posted to various other dates for the purpose of filing additional documents and to implead the legal heirs of the 3rd plaintiff. Thereafter, the case was again posted for cross examination of D.W.1 on 03.09.2022, 05.09.2022 and 06.09.2022. When the case was posted on 13.09.2022, at that time, it was reported that D.W.1-Baskaran had left India and gone to America on



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13.09.2022. Since D.W.1-Baskaran left India without subjecting himself for cross examination, the petitioners/plaintiffs filed an interlocutory application in I.A.No.894 of 2022 under Section 151 C.P.C. to eschew the evidence of D.W.1. The said application was dismissed by the trial Court by its fair and decreetal order dated 16.11.2022. Aggrieved over the same, the present Civil Revision Petition is filed.

3. The learned counsel appearing for the petitioners, by relying upon the Judgment of this Court in ***G.Balaji and another vs. Saravanasamy***, reported in ***2020 SCC online Mad 9030*** submits that the evidence of D.W.1 has to be eschewed and the trial Court has committed an error by allowing the evidence of D.W.1. He further submits that there is no delay on the part of the plaintiffs and only on the default of the defendants, the suit was decreed *ex parte* on 29.11.2007 and on the application filed by the defendants, the suit was restored and even when the case was posted for cross examination of



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the defendants, they sought permission to file certain additional documents and thereafter, for impleading the legal heirs of the deceased 3rd plaintiff, the case was adjourned to various other dates. However, the trial Court, by observing that though D.W.1 was available for cross examination on 03.09.2022 and 05.09.2022, the plaintiffs have failed to cross examine D.W.1, dismissed the application filed by the petitioners. He further submits that D.W.1 has marked certain documents and the relevancy of those documents can be elicited only by cross examining D.W.1. When he was not available for cross examination, the trial Court, in all its fairness, ought to have eschewed the evidence of D.W.1. If the evidence is not tested by cross examining D.W.1, it has no probative value. Therefore, he requests for setting aside the fair and decretal order passed by the trial Court in I.A.No.894 of 2022 in O.S.No.225 of 2002 dated 16.11.2022.



4. This Court considered the submissions made by the learned counsel for the petitioners and also perused the materials placed on record.

5. Admittedly, there is no provision to eschew the evidence. However, the petitioner has made out a case by relying on the Judgment of this Court cited supra. The suit in O.S.No.225 of 2002 has been filed in the year 2002. However, trial has commenced only in the year 2021 and the defendant side evidence has commenced in the month of July 2022 and D.W.1-Baskaran was examined in chief on 05.07.2022. He was also cross examined by the plaintiffs on 13.07.2022 extensively for four pages and for continuation of cross, it was adjourned to 22.07.2022. However, at the request of the defendants, to file additional documents, further cross examination of D.W.1 was not taken up on that day. In the meantime, the 3rd plaintiff died and therefore, steps were taken to implead the legal heirs of the 3rd plaintiff. Thereafter, the suit was posted for cross examination of



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D.W.1 on 03.09.2022 and on that day, D.W.1 was present before the Court, but, the petitioners/plaintiffs did not cross examine him and therefore, it was posted on 05.09.2022 and even on that day, the petitioners/plaintiffs have failed to cross examine him. On 13.09.2022, it was reported that D.W.1-Baskaran had left India and gone to America.

6. The trial Court, considering the fact that D.W.1 was cross examined on 13.07.2022 elaborately for four pages and when he was available for further cross examination on 03.09.2022 and 05.09.2022, the plaintiffs have failed to cross examine him and on the ratio laid down by this Court in ***D.F.Philips vs. Dhamayanthi Kailasam and others*** reported in ***2009 (4) TNLA 217***, dismissed the application filed by the petitioners.

7. The petitioners, by relying upon the Judgment of this Court reported in ***2020 SCC Online Mad 9030 (G.Balaji and another vs.***



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Saravanasamy) has filed this Civil Revision Petition that D.W.1 was not subjected for cross examination and therefore, his evidence has to be eschewed.

8. This Court, in **D.F.Philips's case**, has held that the evidence recorded in cases where cross examination was not done completely cannot be discarded altogether and it also depends upon the facts and circumstances of each case.

9. In the Judgment cited by the learned counsel for the petitioners, this Court has also referred the **D.F.Philips's case**. The facts and circumstances of the case referred by the learned counsel for the petitioner in **G.Balaji's case** are entirely different to the facts and circumstances of the case on hand. In this case, D.W.1 was subjected for cross examination on 13.07.2022 and on that day, he was elaborately cross examined for four pages, however, for further cross examination of D.W.1, further time was taken and D.W.1 was also



available on multiple occasions also, however, the plaintiffs have failed to cross examine him. Now, it is reported that D.W.1 had left India and gone to America. On the side of the defendants, a stand has also been taken before the trial Court that D.W.1 is also prepared to appear through Video Conferencing for cross examination and a specific stand has also been taken that the plaintiffs, knowing that D.W.1 is likely to go to America, had purposely evaded to cross examine D.W.1.

10. In view of the facts and circumstances of the case and as per the ratio laid down by this Court in ***D.F.Philips's case***, this Court is not inclined to interfere with the order of the trial Court.

11. However, in view of the specific stand taken by the defendants before the trial Court that though D.W.1 is in America, he is prepared to appear through Video conferencing for cross examination and also considering the fact that the suit is of the year 2002, in order to avoid further delay in the process of trial, this Court is inclined to



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dispose of the Civil Revision Petition with the following directions:

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“Since the Courts across the State are now provided with video conferencing facility, the trial Court, after ascertaining the availability of such facility and the convenience of the parties, shall fix a specific date for cross examination of D.W.1 through video conferencing. The plaintiffs shall complete the cross examination on that day without taking any further time. The trial Court shall endeavour to conclude the trial and dispose of the suit as expeditiously as possible.”

12. With the above direction, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

12.01.2013

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NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.



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To

1. The Principal District Munsif Court,
Madurai Town.



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B.PUGALENDHI, J.

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