



C.R.P.(MD).No.515 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 28.02.2023

DELIVERED ON: 07.03.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.515 of 2023

1.Pappayee (died)

2.Senguttuvan

3.Elangovan

4.Mathiyalagan

...Petitioners

Vs

1.S.Ramasamy (died)

2.Maliyappasamy

...Respondents

PRAYER: Civil Revision Case is filed under Article 227 of Constitution of India, to call for the records relating to the impugned docketal order dated 17.02.2023 in unnumbered I.A.No. Of 2023 in O.S.No.571 of 2001 passed by the District Munsif, Karur and set aside the same and direct the District Munsif, Karur to number the said I.A. and proceed further.

For Petitioners : Mr.V.Sukumar



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ORDER

The defendants in a suit for declaration, permanent injunction and mandatory injunction are the revision petitioners. The revision petition has been filed challenging an order rejecting an application filed by the defendants for recall of PW1 for conducting further cross examination.

2.On 04.01.2023, when the defendants were not ready for cross examination of PW1, PW1 evidence was closed. Thereafter, the defendants had filed a recall petition and the same was allowed. Pursuant to the said order, PW1 was recalled and he he was cross examined on two days namely 24.01.2023 and 08.02.2023. Thereafter, the defendants had filed a second application to recall PW1 for further cross on the ground that several important points were omitted to be cross examined. The said application was dismissed. Challenging the same, the present civil revision petition has been filed.

3.According to the learned counsel appearing for the revision petitioners, the application has been filed in time and in order to prove the case of the defendants, further cross examination of PW1 ought to have been permitted by the Court. In view of health condition, the defendants



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could not continue the cross examination. A perusal of the dates and events will indicate that the petitioners were never permitted to proceed and there is a bonafide reason for conducting further cross examination of the plaintiff. Unless the defendants were permitted for further cross examination of the plaintiff, they will not be in a position to number their case. Hence, he prayed for setting aside the order passed by the trial Court.

4.I have considered the submissions made on the side of the petitioners and perused the records.

5.In Paragraph No.6 of the affidavit filed in support of the recall petition, the defendants have contended that at the time of perusal of the cross examination of PW1, they came to know that several important facts have not been cross examined. They have further contended that one page relating to cross examination of PW1 was omitted to be typed or misplaced or mistakenly deleted in the cross examination. On the said ground, the application has been filed to recall PW1 for further cross examination. The said application has been dismissed by the trial Judge without numbering the same on the ground that this is a second application for recalling PW1 for further cross examination in the year 2023. The trial Judge has specifically stated that the cross examination of PW1 has been recorded in



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the presence of the defendants' counsel and the allegation that one page has been omitted is false. On the said ground, the application has been returned without being numbered.

6.The above said facts disclosed in the return order will clearly indicate that the petitioners have not specifically mentioned about any omission or deletion. The petitioners had made a vague allegation in relation to the same. Therefore, this Court does not find any merit in the said petition and the same is dismissed.

7.Accordingly, this civil revision petition is dismissed. No costs.

07.03.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
msa

To

The District Munsif, Karur



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R.VIJAYAKUMAR, J

msa

Pre-delivery order made in
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