



C.R.P.(MD) No.669 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.06.2023

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THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(MD) No.669 of 2022

and

C.M.P.(MD) No.2739 of 2022

Veluchamy (Died)

1.Ayyammal

2.Veeralakshmi

... Petitioners

Vs.

Solaimanikannan

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records in fair and decreetal order dated 24.11.2021 passed in I.A.No.1 of 2021 in O.S.No.127 of 2011 by the Sub Court, Aruppukottai.

For Petitioners : Mr.A.Srinivasan

For Respondent : Mr.P.Santhoshkumar



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ORDER

The petitioners are the plaintiffs before the Sub Court, Aruppukottai, in O.S.No.127 of 2011. The petitioners are aggrieved by the impugned order, dated 24.11.2011, passed in I.A.No.1 of 2021 filed by the respondent/third defendant on 09.08.2021 under Order XVIII Rule 15 read with Section 151 of C.P.C. to recall P.W.2. The relevant portion of the impugned order reads as under:-

"In the result, this application is allowed with condition that the petitioner/3rd Defendant shall pay Rs.500/- to the Respondents/Plaintiffs on or before 01.12.2011, failing which, this application shall stand dismissed. Call on 01.12.2021."

2. The specific case of the petitioners is that their father had instituted the above suit to recover the suit claim from the defendants. It is the further case of the petitioners that P.W.2 was cross-examined by the respondent herein as early as 14.09.2012 and his evidence was closed. Thereafter, when the case was posted for final arguments, the respondent/third defendant filed I.A.No.1 of 2021 to recall P.W.2 for further cross-examination.



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3. It is submitted that the Trial Court has allowed the application without considering the fact that the cross-examination of P.W.2 was completed as early as 14.09.2012 and the application to recall the witness was filed without an application for re-opening the case and that the same was allowed by the Court below mechanically.

4. It is further submitted that the petitioners' father also passed away during the pendency of the suit and the petitioners were arrayed as plaintiffs as per the order dated 14.10.2020. There is no justification in further delaying the trial in the suit.

5. I have considered the arguments advanced by the learned counsel for the petitioners and the learned counsel for the respondent.

6. The suit is of the year 2011 in respect of Promissory Notes allegedly executed by the sole defendant deceased Mr.Nagarajan on 25.11.2009 in favour of the sole plaintiff deceased Mr.Velusamy. On the side of the plaintiff, witness were examined namely, the plaintiff and the attesting witness to the Promissory Note dated 25.11.2009, on 14.09.2012. Thereafter, the sole defendant was examined. The sole



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defendant died on 11.09.2017. Meanwhile, the sole plaintiff also died.

Their legal heirs were impleaded as plaintiffs and the defendants respectively.

7. One of the legal heirs of sole defendant namely, the respondent/third defendant had filed I.A.No.1 of 2021 under Order 18 Rule 17 read with Section 151 of Code of Civil Procedure, 1908, to recall the P.W.2 who had been examined as early as 14.09.2012 during the life of the deceased defendant.

8. Although, legal heirs of deceased defendant were entitled to defend the case of the deceased defendant, the fact remains that the application has been filed long after the evidences on the side of the plaintiff were closed and long after the death of the deceased defendant namely Mr.Nagarajan. The application was filed only on 09.08.2021. The impugned order which has been passed by the Sub Court, Aruppukottai is a non-speaking order. Even otherwise, there could be no justification in allowing the re-calling of witness who has been examined as early as 14.09.2012. The suit should have been disposed or decreed on merits as expeditiously as possible.



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9. I do not find any reasons to sustain the impugned order dated 24.11.2021 passed by the Sub Court, Aruppukkottai in I.A.No.1 of 2021 as it is unreasoned. Therefore, the impugned order deserves to be set aside and is accordingly set aside.

10. The Sub Court, Aruppukkottai is directed to proceed with the arguments with the evidence of the defendants' side and the plaintiffs' side and dispose the suit on merits and in accordance with law, as expeditiously as possible, preferably, within a period of 6 months from the date of receipt of a copy of this order.

11. Accordingly, this Civil Revision Petition is allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

15.06.2023

NCC : Yes/No
Internet: Yes/No
Index: Yes/ No
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C.SARAVANAN, J.

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To
The Sub Court, Aruppukottai.

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