



C.R.P(MD)No.1070 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.04.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1070 of 2023

and

C.M.P(MD)No.5018 of 2023

Lilly Ammani

... Petitioner/1st Petitioner/
1st Plaintiff

Vs.

1.A.Anandaraj

2.A.Kiruba Ebenezer

3.Lakshmi Raveendran

P.Masanam (died)

4.M.Rajeswari

5.R.Mathivanan

6.R.Micheal John Sundar

7.R.David Rajesh

8.M.Dhanalakshmi

9.P.M.Mathilagan

10.M.Ramesh

11.P.M.Balu



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12.R.Jayaramdoss

13.J.Koresh Miller

14.J.Anand Yovakash

15.The Madurai City Municipal Corporation,
Through its Executive Authority,
The Commissioner,
Office at Arignar Anna Maligai,
Tallakulam,
Madurai – 625 002.

... Respondents 12 to 15/
Respondents 1 to 4/Defendants 1 to 4

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for records and set aside the fair and decreetal order dated 23.08.2022 in I.A.No.605 of 2021 in O.S.No.660 of 2010 on the file of the Additional District Munsif, Madurai Town.

For Petitioner : Mr.G.Prabhu Rajadurai

ORDER

The present Civil Revision Petition has been filed against the fair and decreetal order, dated 23.08.2022 in I.A.No.605 of 2021 in O.S.No. 660 of 2010 on the file of the Additional District Munsif, Madurai Town.

2. The petitioner is the first plaintiff in O.S.No.660 of 2010. The said suit has been filed by the petitioner along with 8 other plaintiffs for the following relief:



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a) declaring that the plaintiffs are entitled to enjoy the right of common pathway in the suit property shown as ABCD in the plaint sketch.

b) granting a permanent injunction restraining the defendants 1 to 3 and their men and agents or successors from obstructing the right of common pathway of the plaintiff in the suit property either by putting up of fencing or any manner whatsoever

c) directing the defendants to pay the plaintiffs the cost of the suit and

d) granting such other and further reliefs as this Hon'ble Court may deems fit and proper in the facts and circumstances of the case; and thus render justice.

3. It appears that both the plaintiff and the defendants (Private respondents herein) have purchased the property from the same vendor and there is a dispute relating to the use of the land for pathway. The eighth plaintiff was examined on behalf of the plaintiff as P.W.1. It is informed that unfortunately after the chief examination was complete and the eighth plaintiff was partly cross examined, the eighth plaintiff's son has passed away. Therefore, the eighth plaintiff, who was being examined on behalf of the plaintiff loss interest and was not co-operating in the trial before the District Munsif Court, Madurai Town in O.S.No. 660 of 2010.



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4. Under these circumstances, the petitioners have filed I.A.No.605 of 2021 to restore deposition of P.W.1 and to permit the petitioner to let in evidence on behalf of the petitioner/plaintiff. The relevant portion of the order reads as under:

"5.5. Further this court also relied the judgment of Honourable High court in D.F. Philips Vs. Dhamayanth reported in CDJ 2010 MHC 1572, in which the Honourable High Court held in para 28 that, "There is no provision for eschewing the incomplete evidence of a witness. The evidentiary value or probative value of such evidence is a matter to be considered by the trial Court, Situations would arise where on account of the less favourable answers given in the initial stage of cross examination, the witness may avoid the box on subsequent occasions. In such circumstances, the trial Court is justified in forming an opinion about the probative value of such evidence in the peculiar factual back ground. In all cases where there was no deliberate attempt on the part of the witness to avoid cross examination, it cannot be said that the entire evidence has to be eschewed from the consideration. It is always possible for the Court to examine all the surrounding circumstances leading to the avoidance of further cross examination and to come to a definite conclusion as to whether it was deliberate act on the part of the witness.

Hence this court considers mere reason that the petitioner is unable to depose before this court for further cross examination is not a ground for eschewing his evidence. This court considers that the petitioner has not filed this petition with satisfactory reason and it is devoid of merit.

In the result this petition is dismissed. No Cost."



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5. A reading of the above reason indicates that the petitioner cannot have any objection as the Additional District Munsif Court has followed the principles of law that the evidence of witness cannot be eschewed. However, the impugned order does not preclude the petitioner from producing any other witness to establish their case. Therefore, while dismissing the present civil revision petition, I make it clear that on the next date of hearing before the Additional District Munsif Court, Madurai, the petitioner shall produce any other witness, who may be examined on their behalf.

6. The present Civil Revision Petition stands dismissed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

27.04.2023

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

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To

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- 1.The Additional District Munsif,
Madurai Town.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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