



C.R.P.(MD) Nos. 701 and 702 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD) Nos. 701 and 702 of 2018

and

C.M.P(MD) No.3114 of 2018 in C.R.P(MD) No.701 of 2018

C.R.P(MD) No. 701 of 2018:

J.Dhanapackiam

... Revision Petitioner/
1st Respondent/Plaintiff

-VS-

1. M.Santha Suresh

... 1st Respondent/Petitioner/
1st Defendant

2. The Director,
Survey and Settlement Section,
Kodaikanal,
Dindigul District.

3. The District Revenue Officer,
Dindigul,
Dindigul District.

4. The Tahsildar,
Kodaikanal Taluk,
Dindigul District.

... Respondents 2 to 4/
Respondents 2 to 4/Defendants 2 to 4



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PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 16.12.2017 passed in I.A.No.201 of 2017 in O.S.No.140 of 2003 on the file of the learned District Munsif cum Judicial Magistrate, Kodaikanal, Dindigul District.

For Petitioner : Mr.I.Sam Jegan

For Respondents : Mr.V.K.Vijayaragavan – for R1
: Mr.M.Senthil Ayyanar
Government Advocate – for R2 to R4

C.R.P(MD) No. 702 of 2018:

J.Dhanapackiam

... Revision Petitioner/
1st Respondent/Plaintiff

-vs-

1. M.Santha Suresh

... 1st Respondent/Petitioner/
1st Defendant

2. The Director,
Survey and Settlement Section,
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Dindigul District.

3. The District Revenue Officer,
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Dindigul District.

4. The Tahsildar,
Kodaikanal Taluk,
Dindigul District.

... Respondents 2 to 4/
Respondents 2 to 4/Defendants 2 to 4



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PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 16.12.2017 passed in I.A.No.202 of 2017 in O.S.No.140 of 2003 on the file of the learned District Munsif cum Judicial Magistrate, Kodaikanal, Dindigul District.

For Petitioner : Mr.I.Sam Jegan

For Respondents : Mr.V.K.Vijayaragavan – for R1
: Mr.M.Senthil Ayyanar
Government Advocate – for R2 to R4

COMMON ORDER

The present Civil Revision Petitions have been filed by the petitioner under Article 227 of the Constitution of India, against the fair and decreetal orders dated 16.12.2017 passed in I.A.Nos.201 and 202 of 2017 in O.S.No. 140 of 2003 on the file of the learned District Munsif cum Judicial Magistrate, Kodaikanal, Dindigul District.

2. The revision petitioner is the plaintiff and the first respondent is the first defendant before the trial Court.



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3. For the sake of convenience, the parties will be referred as per the litigative status before the trial Court in I.A.Nos.201 of 2017 and 202 of 2017.

4. The short facts which give rise to the instant Civil Revision Petitions are that the petitioner has filed a suit for the relief of declaration and consequential injunction in respect of the suit property. While the suit was pending, it appears that the first defendant who is the petitioner before the trial Court, has filed an application to recall P.W.2 on the ground that when the matter was posted for cross-examination of P.W.2 on 05.07.2017, the counsel for the first respondent was not feeling well. Hence, the cross-examination could not be done.

5. Disputing the above averments, the plaintiff has filed the counter statement and would submit that after posting the matter for many hearings only, the trial Court has closed the evidence. Therefore, the very conduct of the first defendant in filing the recall and reopen applications is only to delay and prolong the litigation.



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6. In support of his case, the learned counsel for the petitioner herein has relied upon the judgment of the Hon'ble Supreme Court reported in **2017 (4) CTC 321 (Gayathri vs.M.Girish)** and the relevant paragraph No.12 is extracted as follows:

“12. In the case at hand, it can indubitably be stated that the Defendant – Petitioner has acted in a manner to cause colossal insult to justice and to the concept of speedy disposal of Civil litigation. We are constrained to say the virus of seeking adjournment has to be controlled. The saying of Gita “Awake! Arise! Oh Partha” is apt here to be stated for guidance of Trial Courts. In view of the aforesaid analysis, we decline to entertain the Special Leave Petition and dismiss it with Costs, which is assessed at Rs.50,000/- (Rupees Fifty Thousand only). The Costs shall be paid to the State Legal Services Authority, Karnataka. The said amount shall be deposited before the Trial Court within eight weeks hence, which shall do the needful to transfer it to the State Legal Services Authority. If the amount is not deposited, the right of defence to examine its Witnesses shall stand foreclosed.”

7. After hearing the either side, the trial Court believed the statement of the first defendant and ultimately, allowed the application on condition to pay



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a sum of Rs.1,000/- (Rupees One Thousand only) to the petitioner herein.

Aggrieved with the order, the petitioner/plaintiff has come up with the revision petitions.

8. It is the submission of the learned counsel for the revision petitioner that the conduct of the first respondent/first defendant is very lethargic and it is duty of the first respondent to be more vigilant for cross-examination of witnesses. However, in spite of so many opportunities, they did not come forward to cross-examine. Therefore, there is no point in allowing the applications.

9. Per contra, the learned counsel for the first respondent submitted that only because of the ill health of the counsel for the first respondent they were not be able to cross-examine.

10. This Court has given anxious consideration to the submissions of the learned counsels on either side.



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11. From the perusal of the records, it is explicit that the very cross-examination could not be conducted on account of the ill health of the first respondent's counsel, which factum was accepted by the trial Court. Apart from that, when the witnesses were examined in chief examination, unless a other party is permitted to cross-examine the witness, there could not be a effective trial. Therefore, the findings of the trial Court in permitting the petitioner to cross-examine the P.W.2 after recall, could not be found fault with.

12. The learned counsel for the petitioner relied upon paragraph No.9 of the judgment of the Hon'ble Supreme Court reported in **2017 (4) CTC 321 (Gayathri vs.M.Girish)** in which is extracted as follows:

“9. In the case at hand, as we have stated hereinbefore, the examination – in chief continued for long and the matter was adjourned seven times. The Defendant sought adjournment after adjournment for cross-examination on some pretext or the other which are really not entertainable in law. But the Trial Court eventually granted permission subject to payment of Costs. Regardless of the allowance extended, the



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Defendant stood embedded on his adamantine platform and prayed for adjournment as if it was his right to seek adjournment on any ground whatsoever and on any circumstance. The non-concern of the Defendant-Petitioner shown towards the proceedings of the Court is absolutely manifest. The disregard shown to the Plaintiff's age is also visible from the marathon of interlocutory Applications filed. A Counsel appearing for a litigant has to have institutional responsibility. The Code of Civil Procedure so command. Applications are not to be filed on the grounds which we have referred to hereinabove and that too in such a brazen and obtrusive manner. It is wholly reprehensible. The law does not countenance it and, if we permit ourselves to say so, the professional ethics decries such practice, it is because such acts are against the majesty of law."

13. As per the above reported judgment, having considered number of adjournments for cross, further considering the age of the plaintiff's, the Hon'ble Supreme Court has rejected the application. But, in the case on hand, it was not the defect of the petitioner herein. However, witnesses were not able to cross-examine on account of the ill health of the first respondent's counsel. In such circumstances, for the inability of his counsel to cross-examine the witnesses, on the given day, could not be found fault with against



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the petitioner herein. Therefore, this Court is of the considered view that the order passed by the trial Court in allowing the recall and reopen applications could not be found faulted with. Therefore, this Court does not want to interfere with the orders of the trial Court and the trial Court orders are hereby confirmed. If the cost ordered by the trial Court is so far not paid, the first respondent herein is given further one week time to comply the condition of the trial Court, from the date of receipt of the copy of this order to the petitioner herein.

14. In the result, both the Civil Revision Petitions stand dismissed. Considering the fact that the suit is of the year 2003, this Court directs the trial Court to dispose of O.S.No.140 of 2003 as expeditiously as possible preferably within a period of six months from the date of receipt of the copy of this order. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

24.07.2023

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

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C.KUMARAPPAN,J.

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