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C.R.P.Nos.831 & 832 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.R.P.Nos.831 & 832 of 2024
and
C.M.P.Nos.4107 & 4109 of 2024

1. R.Subburam
2. S.Murugeshwari

... Petitioners in both C.R.Ps.

Vs.

R.Perumal

... Respondent in both C.R.Ps.

Common Prayer: Civil Revision Petition filed under Article 227 of the Code of Civil Procedure, seeking to set aside the order, dated 06.12.2023 in I.A.Nos.4 and 5 of 2023 in O.S.No.3799 of 2022 on the file of the VI Additional City Civil Court, Chennai.

In both C.R.Ps.

For Petitioner : Mr.R.Dhanasekar

For Respondent : Ms.J.Bhuvaneshwari

COMMON ORDER

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The Civil Revision Petitions are filed to set aside the impugned orders, dated 06.12.2023 in I.A.Nos.4 and 5 of 2023 in O.S.No.3799 of 2022 on the file of the VI Additional City Civil Court, Chennai, allowing to reopen and recall the evidence of P.W.2.

2. Heard Mr.R.Dhanasekar, learned counsel for the petitioners and Ms.J.Bhuvaneshwari, learned counsel appearing for the Respondents.

3. The respondent/plaintiff filed a suit against the petitioners / defendants in O.S.No.3799 of 2022 on the file of the VI Additional City Civil Court, Chennai under Order VII Rule 1 of Civil Procedure Code for recovery of a sum of Rs.10,75,000/- (Rs.10,00,000/- Principal and Rs.75,000/- Interest) with interest at 18% per annum from the date of the plaint and the said suit is pending.

4. In this circumstance, the Respondent / Plaintiff filed Interlocutory



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applications under Order XVIII Rule 17 of C.P.C r/w. Section 151 of C.P.C., to reopen and recall the plaintiff side evidence P.W.2 in I.A.Nos.4 and 5 of 2023. Both the applications were allowed by the VI Additional District Judge, VI Additional City Civil Court, Chennai with costs. Aggrieved against the said order, the present Civil Revision Petitions have been filed by the petitioners / defendants.

5. The learned counsel for the petitioners / defendants submitted that during cross examination, P.W.2 was asked whether he had signed as a witness in any agreement i.e, ஒப்பந்தம் and he answered 'NO' and the same was recorded on 30.08.2023. Subsequently, the defendant side evidence was also closed on 07.11.2023 and the suit was posted for arguments on 23.11.2023. At this stage, the Respondent / plaintiff come out with the applications to reopen and recall the evidence of P.W.2 as after thought which is not permissible in law. Therefore the learned counsel for hte petitioners prayed for dismissal of the Interlocutory applications by allowing the Civil Revision Petitions.



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6. The learned counsel for the respondent/plaintiff supported the impugned order passed in I.A.Nos.4 and 5 of 2023, dated 06.12.2023 and prayed for dismissal of the present Civil Revision Petitions.

7. On perusal of the impugned orders, it is seen that P.W2 was cross examined on 30.08.2023 pertaining to the agreement, Ex.P4, during which P.W.2 was asked whether he had signed in any agreement and he answered 'NO'. Subsequently, the defendant side evidence was over, Exs.B1 to B3 were marked and hte 1st petitioner was examined as D.W.1 and he was cross examined by the respondent / plaintiff in full and that the defendants side evidence was closed on 07.11.2023 and the suit was posted for arguments on 23.11.2023. At this stage, the Respondent / plaintiff come out with the applications to reopen and recall the evidence of P.W.2.

8. During cross examination, P.W.2 clearly deposed that he did not



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know about any agreement and he did not signed on it. However, the Respondent / plaintiff wants to clarify the evidence of P.W.2 deposed on 30.08.2023. It is also noticed that at the time when the Respondent / plaintiff was cross examined, the counsel representing the counsel for the plaintiff on record was present and he failed to clarify him with regard to Ex.P4 by way of reexamination. Hence, the respondent seeks to reopen and recall P.W.2.

9. For the above reasons stated above, the evidence of P.W.2 recorded on 30.08.2023, cannot be recalled or reopened or reexamined belatedly, for clarification. The trial Court failed to consider the fact that once the evidence is given and recorded, then it cannot be recalled belatedly for the such kind of reasons stated above Hence, the impugned orders are unsustainable and the same are liable to be set aside.

10. In the result, the Civil Revision Petitions are allowed. The



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impugned orders in I.A.Nos.4 and 5 of 2023 in O.S.No.3799 of 2022, dated 06.12.2023 on the file of the VI Additional City Civil Court, Chennai are set aside. No costs. Consequently, connected miscellaneous petitions are closed.

12.03.2024

Index: Yes/No
Internet: Yes/No
Neutral Citation : Yes / No
vum

To

The VI Additional City Civil Court, Chennai.

V.SIVAGNANAM, J.

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