



CRP No.3771 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 15.02.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE V.SIVAGNANAM**

**CRP No.3771 of 2023**

**and**

**CMP.No.23462 of 2023**

1. Munisamy
2. Janardhanan  
Bala (died)
3. B.Vanitha
4. B.Dinesh
5. B.Aravindh

... Petitioners

/vs/

Anjalatchi  
rep. by her power agent Rajakumar

... Respondent

**PRAYER :** This Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the order passed in I.A.No.400/2023 in O.S.No.636/2000, dated 01.07.2023 by the learned I Additional District Munsif, Pondicherry.

For Petitioners ... Mr.B.Balavijayan

For Respondent ... Mr.T.S.Baskaran



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## **ORDER**

This Civil Revision Petition has been filed to set aside the order passed in I.A.No.400/2023 in O.S.No.636/2000, dated 01.07.2023 by the learned I Additional District Munsif, Pondicherry.

2. The petitioners herein are the defendants and the respondent herein is the plaintiff in O.S.No.636/2000 and the above suit was filed for *i) declaration, declaring that the suit B schedule property is common way and passage to the properties of the parties to the suit and ii) consequential permanent injunction restraining the defendants from interfering with the plaintiff's use and enjoyment of the above passage and also iii) mandatory injunction, directing the defendants to remove the obstruction made in the B schedule property.* In the above said suit, the DW1/3rd defendant (Bala) was examined in chief on 06.04.2016 and cross examined on 30.08.2016 and 04.11.2016. Subsequently, he passed away on 30.11.2016 and after his demise, the deposition (cross examination) of DW1 was missing. In this regard, enquiry was conducted and report was also filed. In such circumstances, the petitioners herein/defendants have



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filed an application in I.A.No.400/2023 in O.S.No.636/2000 under Section 113 r/w Section 151 of CPC to refer the matter before this Court along with enquiry report, conducted vide proceedings No.489/JUD/PDM/2020 for suitable direction from this Court for further progress of the matter. The above petition was dismissed by the Trial Court and challenging the same, the present civil revision petition has been filed.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent and I have also perused the materials on record.

4. On perusal of the records, it is noticed that the I Additional District Munsif, Puducherry, vide letter dated 31.10.2023, has intimated to this court, through the Chief Judge, Judicial Department, Government of Puducherry, that the missing deposition of DW1 was not traced out and hence, memo has been issued against the concerned staff and explanation was also called for. Further, in this regard, intimation was also submitted to the Registrar Vigilance, vide letter No.160/JUD/IADM/PDY/2020. Consequently, instruction was also received from the Hon'ble Chief Judge,



Puducherry in Endt.No.4439/JUD/CJ/J/2020, dated 28.08.2020 regarding reconstruction of missing records. Subsequently, notice was issued to both side counsel regarding reconstruction of missing records and in the meantime, disciplinary proceedings were also started in Proceedings in Memorandum No.489/JUD/PDM/2020 against the concerned staffs and it stands proved on 07.03.2022. The above letter is reproduced as follows.

" .... I submit your Honour that a suit was filed for Easement Right and Permanent injunction and was numbered as O.S.No.636/2000 on 07.09.2000. Further, written statement was filed by the defendants No.1 and 2 on 24.01.2001 and for D3, written statement was filed on 07.11.2006. Issues were framed on 11.12.2006. Trial was commenced, plaintiff was examined as PW1 and Ex.A1 to Ex.A6 were marked. Cross examination of PW1 was completed on 09.12.2014 and this case was posted for further plaintiff side evidence. PW2, PW3 and PW4 were examined and cross examined on 27.02.2015 and posted for defendant side evidence.

For defendant side evidence, DW1 was examined in Chief and Ex.B1 to Ex.B17 documents were marked. DW1 cross examined in part on 30.08.2016 and completed on 04.11.2016. DW2 was cross examined on 16.02.2018 and on the same day, DW3 was cross examined in part and completed on 22.02.2017. The Senior Draft Man, Department of Survey and Land Records, Puducherry was chief examined as DW4 and Ex.X1 to X12 were marked on 14.03.2018 and cross examined on 15.03.2018. On



that day, DWs were closed by the defendants and posted for arguments.

Further, I submit your Honour that on 22.01.2020, on perusal of records, it seems that the deposition of DW1 is not available in the bundle, hence the bench clerk is directed to search the same and put up in the bundle. Further, 30 days time was granted to trace out the missing deposition of DW1. But, the deposition of DW1 could not be found. Hence, memo was issued to the concerned staff to call for explanation regarding missing of DW1 deposition. Letter was issued to the Hon'ble Registrar, Vigilance about the same.

Further, I submit your honour that on 26.08.2020, intimation submitted to the Hon'ble Registrar Vigilance, vide letter No.160/JUD/IADM/PDY/2020. Instructions received from Hon'ble Chief Judge, Puducherry in Endt.No.4439/JUD/CJ/J/2020, dated 28.08.2020 regarding reconstruction of missing records. Hence, in the interest of justice, court notice was issued to both side counsel. On 05.11.2020, notice was issued to both side counsel regarding reconstruction of missing record. In the meantime, disciplinary proceedings were started (proceedings in memorandum No.489/JUD/PDM/2020) against the concerned staffs, as it stands proved on 07.03.2022.

In view of the above, the I Additional District Munsif, Puducherry is hereby directed to reconstruct the missing records and if not possible, proceed the case with further evidence and complete the trial within four months from



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the date of receipt of a copy of this order and thereafter, dispose the case on merits, as early possible.

5. With the above direction, this civil revision petition is dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

15.02.2024

Index: Yes/No

Internet : Yes/No

mst

To

1.The Chief Judge, Puducherry.

2. The I Additional District Munsif, Puducherry.



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**V.SIVAGNANAM ,J.**

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