



CRP.Nos.3848 & 3849 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

CRP.Nos.3848 & 3849 of 2022

and

CMP.No.20234 of 2022

Bhanumathi

... Petitioner in both CRP.Nos.

Vs.

Nirmala Devi

...Respondent in both CRP.Nos.

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 26.08.2022 made in I.A.Nos.1 & 2 of 2022 respectively in O.S.No.427 of 2017 on the file of the Additional District Munsif Court, Pollachi, and allow the Civil Revision Petition.



CRP.Nos.3848 & 3849 of 2022

For Petitioner in
both CRP.Nos. : Mr.C.Prabakaran

For Respondent in
both CRP.Nos. : Mr.S.Aswin Karthikeyan

COMMON ORDER

These Civil Revision Petitions have been preferred as against the orders passed in I.A.Nos.1 & 2 of 2022 in OS.No.427 of 2017 on the file of the Additional District Munsif Court, Pollachi, wherein the petitioner herein has filed a petition in I.A.No.1 of 2022 to recall the case of PW1 for further cross examination and I.A.No.2 was filed to reopen the case of PW1 for further cross examination. The trial Court dismissed the applications, against which, the present petitions have been filed.

2. Since both the applications are arising out of the same suit, this Court is inclined to pass a common order. The petitioner is the first defendant in the main suit and the respondent has filed the above suit for the relief of declaration and permanent injunction. The respondent was already examined as PW1 and the plaintiff's side evidence was closed. Now the case



CRP.Nos.3848 & 3849 of 2022

is posted for defence side evidence, at this stage, the petitioner herein has filed a petition to cross examine PW1 on the ground that some important points are omitted. The plaintiff's side evidence was closed and hence she filed a petition to reopen the case for further cross examination of PW1 and to recall PW1 for further cross examination. However, the trial Court has dismissed both the applications.

3. The learned counsel for the petitioner would contend that the petitioner is the first defendant in the main suit and the respondent being the plaintiff has filed the suit for the relief of declaration and permanent injunction and already the plaintiff's side evidence was closed. Now the case was posted for the defence side evidence. Already PW1 was cross examined and at the time of examination, some important points were omitted and hence, further cross examination of PW1 is essential. In order to further cross examination of PW1, the witnesses have to be recalled. Since the plaintiff's side evidence was closed and the case was posted for defence side evidence, the evidence of plaintiff side has to be reopened. The petitioner before the trial Court filed an application in I.A.No.1 of 2022 to recall PW1 for further



CRP.Nos.3848 & 3849 of 2022

cross examination and filed IA.No.2 of 2022 to reopen the case for the purpose of recalling of PW1 for further cross examination. The trial Court dismissed the petitions on the ground that already PW1 was extensively cross examined by the petitioner/defendant and the case is pending for more than five years. Therefore the order passed by the trial Court is liable to be set aside.

4. The learned counsel for the respondent would contend that the respondent being the plaintiff filed the main suit for declaration and permanent injunction and already plaintiff's side witness were closed. The plaintiff's side witness was elaborately cross examined by the defendants and after elaborate cross examination only the plaintiff's side evidence was closed and now the case is posted for defendant's side evidence. The defendant without examining the witnesses, filed these applications to reopen the case without any valid reason. Therefore, the trial Court has rightly dismissed the petitions.

5. This Court heard both sides and perused the records.



WEB COPY

6. It is an admitted fact that already the petitioner has cross examined the plaintiff's side witnesses and now the petitioner has filed these petitions to reopen the case for the purpose of recalling the plaintiff's side witness PW1 for further cross examination. According to the petitioner, some vital points were omitted at the time of cross examination. However, the petitioner has not stated as on which aspect he omitted to put question. It is also an admitted fact that already PW1 was cross examined by the petitioner/first defendant. The petitioner has not stated any valid reasons to reopen the case and recall PW1. This Court also at the time of arguments directed the petitioner to produce the copy of the deposition of PW1 and found that already lengthy and elaborate cross examination was made by the petitioner's side. There are the valid reasons to recall the PW1 and to reopen the case for further cross of PW1.

7. Therefore, without any valid reasons, the witness cannot be recalled and the case cannot be reopened. The trial Court also in the order correctly held that already the petitioner cross examined PW1 extensively and



CRP.Nos.3848 & 3849 of 2022

the plaintiff is aged about more than 60 years and the case is pending for more than five years and the petitioner has brought the present petitions without assigning any valid reason. Therefore, the orders passed by the trial Court is correct and does not warrant any interference.

8. In view of the above said discussions, this Court is of the opinion that the Civil Revision Petitions have no merits and deserved to be dismissed. Accordingly, the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

16.07.2024

Index : Yes / No
Internet : Yes / No
dna

To

The Additional District Munsif Court, Pollachi.



WEB COPY



CRP.Nos.3848 & 3849 of 2022

P.DHANABAL., J.

dna

CRP.Nos.3848 & 3849 of 2022
and
CMP.No.20234 of 2022

16.07.2024