



C.R.P.(MD)Nos.294 and 295 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)Nos.294 and 295 of 2024
and C.M.P.(MD).No.1344 of 2024

C.R.P.(MD).No.294 of 2024:

1.Adarsh Educational Trust,
Rep. by its Chairman,
having its Office at the premises of
Adarsh Vidhya Kendra
M.S.Road, Veettoornimoadam,
Nagercoil,
Agasteeswaram Taluk,
Kanniyakumari District.

Dr.G.Surendran (died)

Dr.Indira Surendran (died)

2.Dr.S.Gopal Surendran
3.Dr.Mini Gopal

K.K.J.Bhaskaran Nair (died)

4.Dr.Arunchand
5.Dr.Krishna Surendran

... Petitioners/Respondents 1 to 4 & 7 to
10/Defendants 1 to 4 & 7 to 10

Vs.

N.Kumaraswamy (Died)

1/10



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1.Mrs.Charumathy Raja

2.M.Manikanda Raja ... Respondents 1 to 2/Petitioners/Plaintiffs.

3.S.Padmanabhan

Jaiwant Kumar Babu (Died)

4.Mrs.Priyadarshini

5.Mahesh P.Subramanian ... Respondents 3 to 5/
Respondents 5, 11 & 12/
Defendants 5, 11 & 13.

PRAYER : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the order in I.A.No.1 of 2019, dated 31.10.2023 in O.S.No.88 of 2015 on the file of the Principal District Judge, Kanniyakumari at Nagercoil.

For Petitioners : Mr.V.M.Balamohan Thambi

For Respondents : Mr.S.S.The Sigan for R3 & R5
Mr.R.Murugan for R4
No Appearance for R1 & R2

C.R.P.(MD).No.295 of 2024:

1.Adarsh Educational Trust,
Rep. by its Chairman,
Having its Office at
Adarsh Vidhya Kendra, M.S.Road,
Vettoornimadam, Nagercoil,
Agasteeswaram Taluk, Kanyakumari District.

2.Dr.S.Gopal Surendran



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3.Dr. Mini Gopal

4.Dr.Arunchand,

5.Dr. Krishna Surendran

... Petitioners/
Petitioners No.1, 2, 4 to 6/
Respondents 1, 4, 7, 9, 10/
Defendants 1, 4, 7, 9, 10.

Vs.

1.Mrs.Charumathy Raja

2.M.Manikanda Raja

... Respondents 1 to 2/
Respondents/Petitioners/Plaintiffs.

3.S.Padmanabhan

4.Mrs.Priyadarshini

5.Mahesh P.Subramanian

... Respondents 3 to 5/
Petitioners No.3, 7 & 8/
Respondents 5, 11 & 12/
Defendants 5, 11 & 12.

PRAYER : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the order in I.A.No.4 of 2023 in I.A.No.1 of 2019 in O.S.No.88 of 2015, dated 04.09.2023, on the file of the Principal District Judge, Kanniyakumari at Nagercoil.

For Petitioners : Mr.V.M.Balamohan Thambi

For Respondents : Mr.R.Murugan for R4
No Appearance for RR 1, 2, 3 & 5



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ORDER

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These revision petitions have been filed to set aside the orders passed in I.A.No.1 of 2019 in O.S.No.88 of 2015 dated 31.10.2023 and I.A.No.4 of 2023 in I.A.No.1 of 2019 in O.S.No.88 of 2015, dated 04.09.2023, on the file of the Principal District Judge, Kanniyakumari at Nagercoil.

2.The facts in brief:

Suit in O.S.No.88 of 2015 was filed by the respondent herein seeking various reliefs. The defendants appeared and filed the written statement. After framing of issues PW1 was put on the box, who was examined in chief. Later posted for cross examination. But, he failed to appear. So the suit was dismissed for default on 27.03.2019. To restore the suit, I.A.No.1 of 2019 was filed by the plaintiff. The original plaintiff namely Kumarasamy died and in that place the legal representatives were brought on record as plaintiffs 2 and 3. As mentioned above PW2 was put in the box. Pending cross examination of PW1, the defendant filed a petition under Section 10 of C.P.C to stay the trial of the suit till the disposal of the S.A.(MD).No.104 of 2019, pending before this Court.



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But, later, the third plaintiff namely Manikanda Raja fell sick and affected by *acute lumbo sacral back pain* from 21.07.2019. He was advised to take bed rest for about two months. Later, the case was posted for cross examination. But, he could not appear. The second plaintiff was in USA to attend her daughter and so she could not be present before the Court.

3.That was resisted by the revision petitioner herein by filing counter stating that the reasons assigned are not acceptable and not supported by any documents. The trial Court after hearing the case on merits recorded a finding that the petitioner produced Medical Certificate showing his illness. The revision petitioner did not deny the genuineness of the document. Accepting the reason assigned by the respondent, it allowed the petition by the order, dated 31.10.2023. Against which, this revision is preferred by the revision petitioner. Along with the revision another C.R.P.(MD).No.295 of 2024 is filed by the revision petitioner, against the order passed in I.A.No.4 of 2023 in I.A.No.1 of 2019.

4.The problem arose in this way. In I.A.No.1 of 2019, it was stated



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by the plaintiff that the third plaintiff was affected by *acute lumbo sacral back pain*. The second plaintiff was in abroad. To see whether the third plaintiff was in abroad or in India, his passport was ordered to be produced. Pending consideration in I.A.No.1 of 2019, I.A.No.4 of 2023 was taken up and the trial Court closed I.A stating that the third plaintiff namely Manikanda Raja filed a counter stating that the third plaintiff went to USA and proposed to return to India on 21.07.2019. But due to the medial advise he could not return to India on 21.07.2019. But only in the end of July 2019, he returned to India. So the trial Court observed that the third plaintiff has admitted that he was in abroad between 21.07.2019 and 25.07.2019. So there is no necessity for directing the third plaintiff to produce the passport. Against which, this revision is preferred.

5.The main grievance of the revision petitioner is that a false affidavit was sworn by the third plaintiff stating that he was affected by *acute lumbo sacral back pain*. That was accepted by the trial Court. On the sole ground the order passed by the trial Court in both the matters must be set aside.



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6.Perusal of the records in I.A.No.1 of 2019 shows that, the affidavit was sworn by the third plaintiff namely Manikanda Raja, wherein, he has stated that he became sick from 21.07.2019 and taking treatment in George Mission Hospital, Kottar, Nagercoil. He has also produced the Medical Certificate. The second plaintiff was in abroad namely in USA with her daughter. So she could not appear before the Court. So also, the first plaintiff namely Kumaraswamy. As mentioned above, the second plaintiff was put on box and not the third plaintiff. It is admitted by the respondent that second plaintiff was in abroad, when the trial was posted for cross examination.

7.No doubt, the second plaintiff ought to have filed his own affidavit. But, only the third plaintiff appears to have filed his affidavit. It is also admitted in the counter that only in the last week of July 2019, he returned to India. It is also seen that the third plaintiff also was in America as admitted by him in his counter. But the Medical Certificate shown as he was under the care of George Hospital from 21.07.2019 to 25.07.2019. So the Medical Certificate is not true. Even though it is



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stated by the third respondent that he took treatment through online that was not his affidavit. It appears that while drafting the affidavit the above said mistake was committed by the deponent. So that may not be taken seriously.

8.The fact that the second plaintiff was in abroad and admitted during the relevant time the third plaintiff alone be present before the Court for cross examination. So the order passed by the trial Court is not vitiated because of the above said false certificate issued by the Medical Officer/Doctor, which was also used by the third plaintiff. The third plaintiff may also be proceed for the above said. But as mentioned above, this does not affect the outcome of the order, since the petition was filed within time from the date of dismissal, that too within a week from the date of return of the third plaintiff to India. It was dismissed for default on 23.07.2019. The petition was presented on 07.08.2019 itself. But, the trial Court has not imposed any cost upon the respondent.

9.Considering the oldness of the matter, there shall be a direction to the respondent herein to pay Rs.10,000/- as cost to the revision



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petitioner. The cost must be paid within a period of 15 days from the date of receipt of a copy of this order or it must be deposited before the trial Court. On payment of cost or deposit only, the trial Court restore the the suit to its file and proceed in accordance with law.

10. With the above said directions, these civil revision petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

04.12.2024

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

1. The Principal District Judge, Kanniyakumari at Nagercoil.
2. The Section Officer,
E.R. Section/V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVAAN,J.

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