



C.R.P(MD)No.2623 of 2010

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.04.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.2623 of 2010
and
M.P(MD)No.1 of 2010
and
C.M.P(MD)Nos.6899 & 6900 of 2021

S.Tamilarasan

... Petitioner/Petitioner
Plaintiff

Vs.

- 1.S.Bagavathi Ammal
- 2.A.Sakthi
- 3.V.Vasantha
- 4.S.Pothumponnu @ Anitha
- 5.S.Lakshmi
- 6.S.Aruvagam
- 7.B.Kaliammal
- 8.B.Moorthy

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9.B.Rajesh

10.B.Matcharaja

11.S.Kannan

12.S.Ponpadi

... Respondents/Respondents
Defendants

*(Respondents 2 to 6 through their power
agent first respondent)*

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 23.11.2010 in I.A.No.952 of 2010 in O.S.No.60 of 2008 on the file of the Additional District Judge cum Fast Track Court No.II, Madurai by allowing this revision petition.

For Petitioner : Mr.P.Thiyagarajan

For Respondents : No appearance

ORDER

The present revision petition has been filed by the plaintiff in O.S.No.60 of 2008 on the file of the Additional District Court / FTC No. 2, Madurai.

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2. The revision petitioner herein as plaintiff has filed the above said suit for the relief of specific performance and for permanent injunction not to interfere with the possession and enjoyment of the plaintiff. The plaintiff's side evidence was closed and on the side of the defendants, the eleventh defendant was being examined as D.W.1. While D.W.1 was in the box, the plaintiff had filed I.A.No.952 of 2010 for marking the deposition of the eleventh defendant in O.S.No.329 of 2004 on the file of the Additional District Judge, FTC No.3, Madurai for the purposes of contradicting him as contemplated under Section 145 of the Indian Evidence Act. The said application has been dismissed by the Trial Court. Challenging the same, the present revision petition has been filed.

3. Heard the learned Counsel appearing for the petitioner on 22.04.2024 and it was adjourned due to the non-appearance of the learned Counsel appearing for the respondent. Even today, there is no appearance on the side of the respondents. Therefore, this Court proceeds



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to pass orders on merits after hearing the learned Counsel appearing for the revision petitioner.

4. As could be seen from the order impugned in the revision petition, the Trial Court has dismissed the application on the sole ground that, D.W.1 was completely denying his deposition in O.S.No.329 of 2004. As per Section 145 of the Indian Evidence Act, for the purpose of cross-examination as to the previous statements made by the witness, a document can be marked for the purpose of contradicting him. Just because D.W.1 denies his deposition in the other suit that cannot be a ground for dismissing the said application. The application under Section 145 has been filed to contradict him and to prove that he has given such a statement before the Court of law in O.S.No.329 of 2004. Therefore, the reasoning assigned by the Trial Court for dismissing the said application is not legally sustainable. The order of the Trial Court in I.A.No.952 of 2010 is hereby set aside and the application stands allowed.



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5. Considering the fact that the eleventh respondent Kannan alone is the contesting party, it is not necessary to implead the legal heirs of the fourth respondent, namely, Pothumponnu @ Anitha. Hence, C.M.P(MD)Nos.6899 and 6900 of 2021 are closed with liberty to the revision petitioner to implead the legal heirs of Pothumponnu @ Anitha in the suit.

6. This Civil Revision Petition stands allowed to the above said effect. There shall be no order as to costs. Consequently, M.P(MD)No.1 of 2010 stands closed.

23.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

1.The Additional District Judge cum
Fast Track Court No.II,
Madurai.

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2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Order made in
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