



CRP(MD)No.742 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

CRP(MD)No.742 of 2021
and
C.M.P(MD)No.4022 of 2021

1.Saroja

2.K.Rajasekar

3.C.Seenivasan

... Petitioners/
Petitioners/
Defendants 1, 3 & 4

Vs

1.Ponsamy

2.Sudalaimuthu Nadar (Died)

*(memo dated 18.06.2021 in USR No.12892 is recorded
as R2 died and there is no need to take steps on the death
of R2 as the suit is filed in the representative capacity and
R1 & R3 are already existing in the representative capacity
vide Court order dated 09.07.2021 made in CRP(MD)No.
742 of 2021 and CMP(MD)No.4022 of 2021)*

3.Ayyadurai

... Respondents 1to3/
Respondents 1to3/
Plaintiffs

*(Respondents 1 to 3 represented themselves and on behalf of
Family Members Worshiping the Ooralvaaimozhi Eswari*



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Amman)

4.Chelladurai

... 4th Respondent/
4th Respondent/
2nd Defendant

Prayer:

This Petition is filed under Article 227 of Constitution of India, to set aside the fair and decretal order passed in I.A.No.1 of 2019 in O.S.No.141 of 2012 dated 27.01.2021 on the file of the Additional District Munsif Court, Valliyoor by allowing this civil revision petition.

For Petitioners : Mr.H.Arumugam

For R1, R3 & R4 : No appearance

ORDER

The Civil Revision Petition is filed to set aside the fair order and decretal order dated 27.01.2021 passed in I.A.No.1 of 2019 in O.S.No.141 of 2012 on the file of the Additional District Munsif Court, Valliyoor.

2. In spite of notice served on the respondents 1, 3 and 4 and their names being printed in the cause list, there is no representation on behalf of the respondents 1, 3 and 4.

3. The respondents 1 to 3 are the plaintiffs and the revision petitioners and the fourth respondent are the defendants.



4. For the sake of convenience and brevity, the parties herein will be referred to as per their status/ranking in the trial Court.

5. The plaintiffs have filed a suit in O.S.No.141 of 2012 for themselves and representing the family members worshipping Ooralvaaimozhi Eswari Amman under Order 1 Rule 8 C.P.C. for declaration and for permanent injunction. The defendants have filed their written statement. During trial, the defendants 1, 3 and 4 have filed an application in I.A.No.1 of 2019 seeking orders to eschew the chief examination affidavit of P.W.2 from the records. The learned Magistrate, after enquiry, has dismissed the application vide order dated 27.01.2021. Challenging the said dismissal order, the present revision came to be filed.

6. The learned counsel appearing for the defendants 1, 3 and 4 would submit that during trial, third plaintiff as P.W.1 has filed proof affidavit alleging that he is deposing on behalf of all the plaintiffs and he was subjected to cross examination, but, subsequently, the first plaintiff as P.W.2 has also filed proof affidavit reiterating the entire averments raised by the third plaintiff. He would further submit that they have elicited so many admissions through cross examination of P.W.1 and as such, the evidence of P.W.2 is verbatim of P.W.1. The evidence of P.W.2 is to be eschewed but the trial Court, without considering the



same, has dismissed the application.

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7. It is clear that it is open to the plaintiff to examine any number of witnesses and the defendants cannot seek to eschew the evidence of the witness on the side of the plaintiff as the defendant has an opportunity to cross examine the witness.

8. The learned counsel appearing for the defendants 1, 3 and 4 would further submit that Order 18 Rule 3A C.P.C. contemplates a wholesome procedure that a litigant should not be allowed to fill up the lacuna by examining himself/herself at a later stage, after examining his/her witnesses and hence, the first plaintiff in filing his chief examination affidavit without seeking any permission under Order 18 Rule 3A is illegal and erroneous and P.W.2 cannot be examined to fill up the lacuna that occurred in the evidence of P.W.1.

9. As rightly observed by the learned trial Judge, P.W.2 is a party to the suit being the first plaintiff and not an independent witness. Hence, Order 18 Rule 3A C.P.C. is not applicable to the facts of the present case.

10. The trial Court has specifically observed that even when the chief



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examination affidavit was filed by the first plaintiff to give his evidence as P.W.2,
the defendants have not raised any objection.

11. In view of the above, this Court is of the opinion that the order passed by the trial Court needs no interference. Accordingly, the Civil Revision Petition is disposed of. Since the suit is of the year 2012, the learned Additional District Munsif, Valliyoor, is directed to dispose of the suit in O.S.No.141 of 2012 within a period of one year from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

18.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
csm

To

The Additional District Munsif, Valliyoor.



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N.SENTHILKUMAR, J.

csn

Order made in
CRP(MD)No.742 of 2021
and
C.M.P(MD)No.4022 of 2021

Dated : 18.12.2024