



Rev.Aplc.(MD).No.82 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

REV.APLC.(MD)No.82 of 2024

in

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

and

C.M.P(MD) No.10303 of 2024

S.Kannan

... Review Petitioner/
11th Respondent

Vs.

1. S.Tamilarasan

... 1st Respondent/Petitioner

2. S.Bagavathiammal

3. A.Sakthi

4. V.Vasantha

5. S.Pothumponnu @ Anitha

6. S.Lakshmi

7. S.Aruvagam

8. Kaliasammal

9. Moorthy

10. B.Rajesh



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WEB COPY 11. B.Matcharaja

12. S.Ponpadi

... Respondents 2 to 12/
Respondents 1 to 10 and 12

(Respondents 2 to 6 through their
Power agent 1st Respondent)

PRAYER: Review Application filed under Order 47 Rule 1 and 2 r/w
Section 114 of C.P.C, against the order dated 23.04.2024, passed in C.R.P
(MD) No.2623 of 2010 on the file of this Court.

For Petitioner : Mr.P.M.Vishnuvarthanan

For Respondents : Mr.P.Thiyagarajan – for R1

ORDER

The present Review Application has been filed by the 11th respondent
in C.R.P(MD)No.2623 of 2010, seeking to review the order, dated
23.04.2024.

2. The first respondent herein as plaintiff has filed the suit in O.S.No.
60 of 2008 on the file of the Additional District Court/FTC No.2, Madurai,
for the relief of specific performance and for permanent injunction not to
interfere with the possession and enjoyment of the plaintiff. The plaintiff's



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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.

3. The learned counsel appearing for the first respondent herein had contended that in his counter filed to the application in I.A.No.952 of 2010 that it has been specifically contended by him that the deposition made in O.S.No.329 of 2004 has no relevancy whatsoever to the facts and dispute in the suit. He further pointed out that unless the entire deposition is recorded along with the questions and the answers, it would not be appropriated for contradicting him in the present suit. He further contended that the context in which the answers were given by him in other suit have also to be considered. Without considering the said aspects, the deposition in O.S.No. 329 of 2004 cannot be marked.



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4. The learned counsel appearing for the revision petitioner had relied upon the judgment of the Hon'ble Supreme Court reported in ***AIR 1959 0 Supreme (SC) 88 P 1012 (Thasildar Singh and another Vs. State of U.P)*** to impress upon the Court that only for the purpose of contradicting a witness Section 145 of the Evidence Act, would be invoked.

“Resort to Section 145 would only be necessary if the witness denies that he made the former statement. In that event, it would be necessary to prove that he did, and if the former statement was reduced to writing, then S.145 requires that his attention must be drawn to these parts which are to be used for contradiction. But that position does not arise when the witness admits the former statement. In such a case all that is necessary is to look to the former statement of which no further proof is necessary because of the admission that it was made.”

5. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.



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6. It is alleged by the plaintiff in the suit that D.W.1 in O.S.No.329 of 2004 had deposed to an extent that would be favourable to the case of the plaintiff. However, D.W.1 has stoutly denied that the said deposition is no way connected with the facts of the suit or the suit properties. Therefore, the said deposition is no way relevant for arriving at any adjudication in the present suit. The trial Court has chosen to dismiss the said application on the ground that DW-1 has totally denied his deposition in O.S.No.329 of 2004.

7. D.W.1 is always at liberty to explain the circumstances under which such depositions were made. He is always at liberty to contend that the deposition in O.S.No.329 of 2004 has no relevancy whatsoever with the present suit. In such circumstances, merely because of D.W.1 has denied the deposition in the other suit, the present application filed by the plaintiff could not have been dismissed. The application has been filed only to place the deposition of D.W.1 in O.S.No.329 of 2004, in the present suit, so as to extract his explanation. In such circumstances, D.W.1 cannot have any grievance whatsoever when he is always at liberty to offer his explanation to his deposition in O.S.No.329 of 2004.



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8. Considering the fact that the review applicant Kannan alone is the contesting party, it is not necessary to implead the legal heirs of the fifth respondent, namely, Pothumponnu @ Anitha.

9. In view of the above said observation, this Review Application stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

01.08.2024

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