



CRP(MD).No.2933 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.11.2024

CORAM

THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.2933 of 2024 and
CMP(MD).No.16770 of 2024

1. T.Ramanathan
2. L.Sivanesan

: Petitioners/ Plaintiffs

Vs.

1.M.Ramamoorthy @ Ramakrishnan
2.Amaravathy

: Respondents / defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 12.09.2024 made in I.A.No. 7 of 2023 in O.S.No.293 of 2014 on the file of the Principal District Munsif Court, Sankarankovil, Thenkasi District.

For Petitioners : Ms.S.Mahalakshmi

For 1st respondent : Mr.M.Thirunavukkarasu

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order, dated 12.09.2024 made in I.A.No.7 of 2023 in O.S.No.293 of 2014 on the file of the Principal District Munsif Court, Sankarankovil,



CRP(MD).No.2933 of 2024

Thenkasi District.

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2. According to the revision petitioners, they have filed the said suit in O.S.No.293 of 2014 on the file of the Principal District Munsif Court, Sankarankovil, Thenkasi District for permanent injunction against the respondents / defendants for declaring the sale deed, dated 20.05.2008 executed by the first defendant in favour of the 2nd respondent / 2nd defendant as null and void. In the said suit, separate written statements were filed by the respondents / defendants. After completion of the plaintiffs side evidence, the case was posted for defendants side evidence. While so, the defendants filed an application to strike off the testimony of DW.1 stating that 2nd defendant is employed at Mumbai and therefore, revision petitioners are un-able to produce him for cross examination. The trial Court in spite of the objection made by the petitioners allowed the said application which is under challenge.

3. The specific case of the revision petitioners is that 2nd defendant has filed the written statement and proof affidavit as DW1 in which the local address was only stated and now, it is contended that he is employed at Mumbai and therefore, not able to produce him for cross examination.



CRP(MD).No.2933 of 2024

The intention is only to avoid the cross examination.

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4. The learned counsel appearing for the revision petitioners would submit that 2nd defendant / DW1 has filed a separate written statement but to avoid scrutiny of cross examination and to defeat the original claim of the revision petitioners / plaintiffs, intentionally failed to subject himself for cross examination. However, the trial Court without considering the above facts erroneously allowed the said application for deleting the proof affidavit of DW.1 which calls for interference by this Court.

5. On the other hand, the learned counsel appearing for the first respondent would submit that since the 2nd defendant / DW.1 has permanently employed at Mumbai, they are unable to produce him for cross examination. There is no malafide intention on the part of the 2nd defendant / DW.1. However, the learned counsel would submit that the 2nd defendant / DW.1 is available in his native place from 9th to 20th December 2024. His further contention is that since the first defendant has filed his proof affidavit as DW.1, this revision may be allowed the second defendant shall be examined as DW.2.



CRP(MD).No.2933 of 2024

6. Heard the learned counsel appearing for the petitioners and the learned counsel for the first respondent and perused the materials available on record.

7. On perusal of the records it is seen that the 2nd defendant has filed a separate written statement and also filed a proof affidavit as DW.1 since he failed to subject himself for cross examination, the 2nd respondent / defendant was constrained to file an application to eschew to delete the proof affidavit of DW.1. It is also seen that only through the cross examination of said witnesses the available claim of the revision petitioners can be established. Moreover, the learned counsel has informed to this Court that the said witness is available in his native place from 9th December to 20th December 2024, the 2nd defendant is directed to subject himself for cross examination before the trial Court. Since the first defendant has already filed his proof affidavit as DW.1, the proof affidavit of 2nd defendant shall be received by the trial Court as proof affidavit of DW.2 and the above said witness shall be examined by the revision petitioners on the same day as the business of the Court permits.

8. With the above observations, the impugned order, dated



CRP(MD).No.2933 of 2024

12.09.2024 made in I.A.No. 7 of 2023 in O.S.No.293 of 2014 on the file of the Principal District Munsif Court, Sankarankovil, Thenkasi District is hereby set aside and accordingly, this Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

25.11.2024

Index : Yes / No
Internet : Yes/ No
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Note: Issue order copy on 27.11.2024

To

The Principal District Munsif Court, Sankarankovil, Thenkasi District.



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CRP(MD).No.2933 of 2024

K. GOVINDARAJAN THILAKAVADI, J.,

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25.11.2024