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Rev.Aplo.No.4 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2025

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

Rev.Aplo.No.4 of 2024
in T.O.S.No.63 of 2016

1. R.Jayanthi
2. R.Naveenkumar
3. R.Baskar

... Petitioners

Vs.

1. C.Gajalakshmi
2. A.Rajeswari
3. Nagaraj @ Meganathan

... Respondents

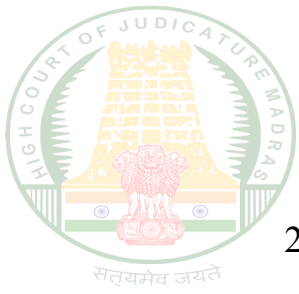
Review Petition is to review the judgment dated 29.08.2023 passed in T.O.S.No.63 of 2016 by this Court.

For Petitioner : Mr.A.Palaniappan

For R1 : Mr.M.Baskaran

ORDER

The only ground that has been raised in this Review Petition is that the result of the judgment in TOS.No.63 of 2016 was on the basis that P.W.2 was not available for cross-examination.



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2. Mr.A.Palaniappan, the learned counsel for the Review Petitioners / plaintiffs, submitted that the adjudication of the Master Court would show that P.W.2 was present on 19.08.2019 for chief examination but, he was not cross-examined. The adjudication does not show whether the case was adjourned on the request of the defense counsel for cross-examining P.W.2. When the case was posted to the next hearing on 04.11.2019, the defense side witnesses were started to be examined and hence, the failure on the part of the defendants to cross-examine P.W.2 should not go adverse to the case of the plaintiffs.

3. Mr.M.Baskaran, the learned counsel for the respondents / defendants, submitted that the allegation that P.W.2 could not come for cross-examination because of the police complaint given by the first defendant was not true and it is irrelevant. Had P.W.2 been present during the next hearing, the defense counsel would have cross-examined him and thereafter proceeded to examine the defense side witness.

4. On perusal of the judgment dated 29.08.2023, it is seen that this Court has dealt at length about the manner in which the Will has to be proved. As the attestation of the Will needs to be proved, it has been



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discussed that the absence of cross-examination of P.W.2 who is the attesting witness does not make his evidence complete. On the above ground, the evidence of P.W.2 is considered to be incomplete in respect of the proof of attestation and in turn, the proof of the Will.

5. As stated by the learned counsel for the review petitioners / plaintiffs, the adjudication details of the Master Court would show that P.W.2 was present on 19.08.2019 and his chief examination was taken. The adjudication does not state anything about the presence of the defense counsel to cross examine P.W.2 when he was present on 19.08.2019. It is neither seen that time has been requested by the defense counsel to cross-examine P.W.2. The proceedings jumped to the next stage of D.W's chief examination on 04.11.2019. So the absence of cross-examination of P.W.2 does not appear to be the fault of witness not being present, but the failure on the part of the defendants to make use of the opportunity on 19.08.2019 to cross examine him.

6. P.W.2 is said to be a senior citizen and in that case, it would have been appropriate to cross-examine him on the same day. As the diary details which is relevant to the background on which P.W.2 could not be cross-



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examined was left to be noticed, the finding has been rendered that P.W.2's evidence is incomplete. The above finding was on the basis on which the suit has been dismissed. It is further observed that P.W.2 could not come for cross-examination because of the police complaint given by the first defendant. So, it is observed in such case that the plaintiff ought to have taken summons through the Court ensuring P.W.2 is present for cross-examination. Such contingency would not arise because defense side did not insist for P.W.2's presence for cross-examination during the next hearing. If P.W.2 was not present, it can be presumed that there was some difficulty for P.W.2 and the plaintiffs ought to have requested summons for P.W.2. As these facts were not produced earlier, I feel the matter has to be remitted back to the Master Court for allowing the defense side to cross-examine P.W.2 by fixing a date.

7. It is undertaken by the learned counsel for the plaintiffs that no appeal has been filed against the judgment and decree passed in TOS.No.63 of 2016 dated 29.08.2023. As the real fact behind the partial evidence of P.W.2 is discovered only now and it was not noticeable in the usual course, I feel it is appropriate to allow the Review Petition on the grounds pleaded by the review petitioner.



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Index : Yes / No
Neutral citation : Yes / No
Speaking Order / Non Speaking order
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R.N.MANJULA, J.

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