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C.R.P.No.1571 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2025

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.1571 of 2025

And

C.M.P.No.9137 of 2025

1.Srinivasan
2.Kanniappan
3.Murugan

... Petitioners

Vs.

Loganathan (died)

1.Vijayalakshmi
2.L.Ashok Kumar
3.Uma Maheshwari

... Respondents

Prayer:

Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order passed by VII Assistant Judge in I.A.No.9 of 2025 in O.S.No.2222 of 2020 dated 19.03.2025.

For Petitioners : Mr.D.S.Ramesh
For Respondents : R1 and R3 – No Appearance
Ms.R.V.Rukmani for R2
for M/s.P.B.Ramanujam Associates

O R D E R

Challenging the order of the executive Court declining to eschew



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the evidence of P.W.1, the present revision is filed.

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2.The suit has been filed for permanent injunction against the revision petitioner by the original plaintiff Loganathan. When the matter came up for trial, P.W.1 Loganathan has been examined as P.W.1. P.W.1 filed proof affidavit on 04.09.2023. Exhibits Ex.A1 to Ex.A15 were marked through him. Thereafter for cross examination of P.W.1, the matter was adjourned to 18.09.2023. However, as the Court was declared as holiday on that day, the matter was adjourned to 07.10.2023. Again since P.W.1 was not present, the matter was adjourned to 19.10.2023. On 19.10.2023, cross examination was not done by the defendant despite the presence of P.W.1 till 2.40 p.m. The defendant counsel submitted before the Court that he is not ready to cross examine P.W.1 fully. Therefore, the Court has closed the evidence and adjourned the matter for further evidence on 02.11.2023. On 02.11.2023, the defendant counsel was absent and there was no representation. Hence, the plaintiff side evidence was closed and the matter was posed for defendant side evidence on 22.11.2023. The plaintiff counsel filed memorandum intimating the death of the plaintiff. At that stage, the revision petitioner also filed an application to reopen recall petition. Thereafter that application has



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been filed to eschew the evidence which has been dismissed by the trial Court. Challenging the same, the present revision has been filed.

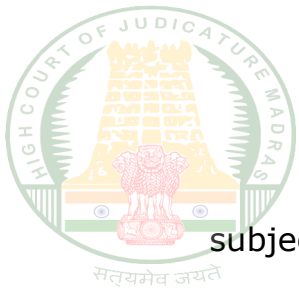
3.The main contention of the learned counsel appearing for the petitioners is that the petitioners were not given proper opportunity to cross examine P.W.1. Therefore, the evidence recorded on the side of P.W.1 has to be eschewed and cannot be relied upon by the Court.

4.Whereas, the learned counsel appearing for the respondents would submit that despite opportunity given, cross examination was not done.

5.I have perused the entire materials.

6.Now the point that arise for consideration is once the evidence is recorded by the Court, can it be eschewed as a matter of right.

7.On perusal of the entire materials, particularly P.W.1 Loganathan was examined as P.W.1 on 04.09.2023. Thereafter the matter got adjourned for several other hearings and finally on 19.10.2023. On 19.10.2023, though P.W.1 was present and ready to



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subject himself for cross examination till 2.40 p.m., the counsel appearing for the defendant did not cross examine P.W.1. Therefore once opportunity was given to the defendant for cross examination which has not been availed, one cannot complain that there is no opportunity at all. The very purpose of speedy trial is to dispose of the dispute between the parties early.

8.The suit itself is for permanent injunction and the person sitting over the property cannot take advantage to delay the proceedings. Having given opportunity, the defendant not availed the opportunity for cross examination and latter it cannot be complained by the party who failed to avail the opportunity to cross examination on genuine reasons. No doubt due to some exigencies, the delay is bound to appear due to the mistake of the counsel or the party, but at the same time, merely because the cross examination has not been done for some other reasons, that cannot be a ground to show that the entire evidence has to be eschewed from the record.

9.The conduct of the parties also assumes significance. The revision petitioners appear to be neighbour of the original plaintiff. The plaintiff admittedly died on 05.11.2023, whereas the application



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for reopen and recall the plaintiff is filed very conveniently on 23.11.2023, despite knowing the fact of death of the plaintiff. This fact also cannot be ignored. The conduct assumes significance to assess the entire issue.

10.In such view of the matter, once the party fails to cross examine the evidence, latter it cannot take advantage of the death of the witness to eschew the entire evidence. Hence, I do not find any merits in the revision. As rightly held by the trial Court, while assessing the evidence it also has to take note of the fact that evidence recorded on one side and party has not been confronted in any of the matter that aspect has to be taken note of.

11.With the above observation, the civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

23.06.2025

pri

Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No
To

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1.The VII Assistant City Civil Court at Chennai.

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N.SATHISH KUMAR,J.
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