



C.R.P.Nos.377 and 378 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17/3/2025

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C O R A M

The Hon'ble **Ms.JUSTICE P.T.ASHA**

Civil Revision Petition Nos.377 and 378 of 2025

a n d

C.M.P.Nos.2231 and 2237 of 2025

1. Selvam

2. Rani

...

Petitioners

in both the petitions

Vs

1. Rajan

...

First Respondent

in both the petitions

2. Rajammal

3. Saradha

...

Second and third

respondents in both the petitions

COMMON PRAYER: Petitions filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 17/8/2023 and 20/9/2023 passed in I.A.Nos.4 and 5 of 2023 in O.S.No.65 of 2023 on the file of the District Munsif Court, Sendhamangalam.



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For petitioners	...	Mr.S.Saravanakumar
For respondents	...	Not ready in notice

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COMMON ORDER

The first and second defendants in the suit in O.S.No.65 of 2023 on the file of the District Munsif, Sendhamangalam are the revision petitioners before this Court. They seek to challenge the orders passed in I.A.Nos.4 and 5 of 2023. I.A.No.4 of 2023 is an application filed by the revision petitioners for recalling P.W.1 for cross-examination. I.A.No.5 of 2023 is an application filed by the respondents/plaintiffs for deferring the oral examination of defendant No.2. Since both the I.As arise out of the same suit, common order is being passed in these Civil Revision Petitions.

2. The respondents had filed the aforesaid suit seeking an injunction restraining the defendants from interfering with the constructions being put up by the petitioners in the suit schedule property. Originally, the suit was filed before the District Munsif, Namakkal in O.S.No.307 of 2013 and thereafter, it was transferred to the District Munsif, Sendhamangalam and renumbered as O.S.No.65 of 2023. The first respondent is the father and the



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second respondent is the son and are plaintiffs in the said suit. Under a sale deed dated 19/12/1975, the first item of property was purchased by the first respondent and he had put up a house thereon. The second item of property was purchased by the second respondent on 12/9/1978. The first respondent has passed away pending the suit. The defendants/revision petitioners who have an adjacent property in order to annex their property with the suit property had called upon the revision petitioners to sell the property which was turned down. The revision petitioners according to the respondents/plaintiffs have been causing one obstruction after the other with regard to the construction being put up. Therefore, they have come up with the suit for the relief stated supra.

3. The revision petitioners would submit that the suit schedule property has not been described properly with boundaries. The defendants property is situate in S.Nos.290/11 and 290/10. S.No.290/2 is a pathway. The respondents have encroached this pathway.

4. It is the case of the revision petitioners herein that the respondents are the persons who are causing hindrance in the enjoyment of the property

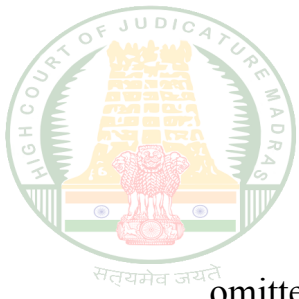


by the revision petitioners. They sought for dismissal of the suit.

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5. After the evidence of P.W.2, the petitioner has come forward to file I.A.No.4 of 2023 seeking to recall P.W.1. In the affidavit filed in support of the petition, they would submit that while preparing for the oral evidence of the petitioners, they realised that certain questions relating to the suit documents had not been addressed to P.W.1 and therefore, P.W.1 has to be recalled for adducing evidence. Similarly, the respondents/plaintiffs had filed I.A.No.5 of 2023 for deferring the evidence of P.W.2 since he is a lorry driver and always on the move.

6. A counter has been filed in which the respondents would submit that this is only an attempt to fill up the lacuna and proceeded to dismiss the petition. As regards I.A.No.5 of 2023, they contended that evidence cannot be indefinitely postponed. However, despite the protest of the petitioners, the learned Judge had allowed the application. It is against these orders, these Civil Revision Petitions have been filed.



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7. The petitioners have stated that certain questions have been omitted to be asked to P.W1 which had come to light only when the petitioners/defendants were preparing their evidence. The evidence of P.W.1 had been completed on 10/7/2023 and immediately on 22/7/2023, within twelve days, they have taken out these application. However, they have not given details on what has been omitted to be asked. This opinion of the learned District Munsif, cannot be countenanced for the simple reason that the petitioners cannot divulge the question that would be put to P.W.1. That apart, the application has been filed within a few days of evidence of P.W.1 having been completed i.e., twelve days. Therefore, the dismissal of the application in I.A.No.4 of 2023 has to be necessarily set aside and accordingly the same is set aside.

8. As regards, I.A.No.5 of 2023 it is rather surprising that the learned Judge has proceeded to defer the evidence of P.W.2 without stipulating any time frame. The prayer sought for in the application was allowed by the learned Judge. Such an order cannot be sustained as the plaintiffs evidence has to be completed before the defendants evidence can be proceeded.

P.T.ASHA,J



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9. That being so, though the petitioners have not sought for indefinite deferment of the evidence, the learned Judge has proceeded to grant the same. This order cannot be sustained.

10. In the result, both the Civil Revision Petitions are allowed and the order passed by the learned District Munsif, Sendhamangalam in I.A.Nos.4 and 5 of 2023 are set aside. No costs. Consequently, the connected Miscellaneous Petitions are closed.

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Index: Yes/No

Neutral Citation: Yes/No

To

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