



WEB COPY

CRP No.5143/2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-07-2025

CORAM

THE HONOURABLE MR.JUSTICE P.B. BALAJI

CRP No. 5143 of 2024

and

CMP.No.28836 of 2024

S.Vignesh
S/o.K.Sekar,
Door No.738,Thervazhi Village and
post, Gummidioondi Taluk,
Tiruvallur District, Chennai -601 201.

Petitioner

Vs

1.G.Gnanamoorthy
S/o. Late Govinda Raji Rddiar
No.628(A), Mettu Street,
Thervazhi Village and Post,
Gummidipondi Taluk,
Tiruvallur District.

2.G.Dhatchinamoorthy,
S/o. Late Govinda Raji Rddiar
No.628(A), Mettu Street,
Thervazhi Village and Post,
Gummidipondi Taluk,
Tiruvallur District.



CRP No.5143/2024



Respondents

PRAYER

This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order passed by the District Munsiff cum Judicial Magistrate at Gummidipoondi in I.A.No.03/2004 in OS.NO.10/2022 dated 05.11.2024.

For Petitioner: Mr.X.Selvam Sounder

For Respondents: Mr.A.Vinayagaperumal

ORDER

The plaintiff aggrieved by the order of the Trial Court in [I.A.No.3/2024](#) in [O.S.No.10/2022](#), has come forward with the present revision. The said application was taken out to eschew the evidence of PW.1 which was recorded subsequent to the ex parte decree being set aside but based on a proof affidavit, which was filed by the plaintiff at the stage of the defendants having been set ex parte.

2. The learned counsel for the petitioner would therefore state that the petitioner ought to have been given an opportunity to file a fresh proof affidavit, and the defendant should not have been permitted to cross-examine PW.1 based on the earlier proof affidavit, which was filed at the stage when the written statement itself was not taken on file. He would therefore pray that the order



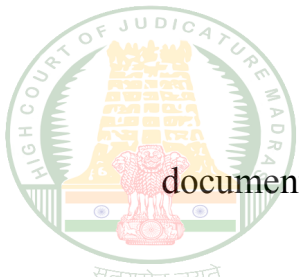
passed by the trial Court be set aside.

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3. Per contra, the learned counsel for the respondent would state that though initially the defendant was set exparte and the suit also was decreed in favour of the plaintiff, based on the proof affidavit that was filed by the plaintiff and the suit documents being marked, subsequently the defendant took out an application to set aside the exparte decree and also chose to file written statement along with the said application and the same came to be allowed. According to him, thereafter the defendant has also cross examined PW.1 at length and having submitted himself for cross examination, the plaintiff cannot thereafter turn around and seek to eschew the said evidence that has already come on record.

4. I have carefully considered the submissions advanced by the learned counsels on either side and have also gone through the order passed by the trial Court.

5. No doubt, the defendant was initially set ex parte, and at the time of ex-parte evidence, being recorded the plaintiff had chosen to file a proof affidavit and also marked documents. Based on the said proof affidavit and the



documents that have been exhibited by the plaintiff, the suit came to be decreed

ex-parte. Subsequently, the defendant has sought to set aside the said ex-parte

decree and also filed a written statement along with the said set aside

application. The said application came to be allowed and thereafter the case

proceeded from the stage where it was left, namely the cross-examination of

PW.1.

6. PW.1 submitted himself to elaborate cross-examination at the hands of the counsel for the defendant. Thereafter, he has taken out I.A. No.3/2024 seeking to eschew the evidence that has been adduced by PW1 on the ground that the proof affidavit on which the cross-examination was permitted was filed before the filing of the written statement. Unfortunately, the plaintiff ought not to have permitted cross-examination by the defendant and instead, should have insisted on filing a fresh additional proof affidavit.

7. Though it is contended by the learned counsel for the petitioner that an objection was taken up and the trial court has not granted time, and hence, with no other option, PW.1 submitted himself to cross-examination, I do not find any such indication in the impugned order passed. In any event, having voluntarily



submitted himself for cross-examination by the defendant, though based on an earlier proof affidavit, the petitioner cannot seek now to eschew the evidence which is already on record. However, the petitioner shall be entitled to file an additional proof affidavit to meet the averments and allegations made in the written statement about which the earlier proof affidavit could not have spoken.

8. In the light of the above discussions, dismissing the Civil Revision Petition, liberty is granted to the petitioner/plaintiff to file an additional proof affidavit in order to meet the averments and allegations set out in the written statement and on such additional proof affidavit being filed, the defendants shall have the right to further cross examine the witness. There shall be no order as to costs. The connected miscellaneous petition is closed.

01-07-2025

jrs

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



WEB COPY

CRP No.5143/2024





CRP No.5143/2024



WEB COPY

1.The District Munsiff cum Judicial
Magistrate at Gummidipoondi

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P.B.BALAJI J.

jrs

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