



CRP(MD). Nos.1460 and 1461 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 17.12.2025

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THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

**CRP(MD). Nos.1460 and 1461 of 2021
and
CMP(MD) No.8149 of 2021**

Ebenezer Gnanaraj

... Petitioner in both CRPs.,

Vs

1.Rajasekaran (died)

2.Leelvathi

3.Christa

4.Pelcia

*(R2 to R4 has been impleaded vide
order dated 10.07.2025)*

... Respondents in both CRPs.,

COMMON PRAYER :-Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order in I.A.Nos.4 and 5 of 2020 in O.S.No.103 of 2018, dated 18.01.2021 on the file of the Principal District Munsif Court, Thoothukudi.

For Petitioner : Mr.R.Pon Karthikeyan
in both CRPs.,



CRP(MD). Nos.1460 and 1461 of 2021

For Respondents
in both CRPs., : Mr.M.P.Senthil

COMMON ORDER

These Civil Revision Petitions have been filed challenging the order dated 18.01.2021 made in I.A.Nos.4 and 5 of 2020 in O.S.No.103 of 2018 on the file of the Principal District Munsif Court, Thoothukudi.

2.The petitioner/plaintiff has filed a suit in O.S.No.103 of 2018 on the file of the Principal District Munsif Court, Thoothukudi, for the relief of permanent injunction and other reliefs. Pending suit, the petitioner/plaintiff has filed applications in I.A.Nos.4 and 5 of 2020 seeking to recall P.W1 and to mark the documents on his side and the same was dismissed on 18.01.2021. Challenging the same, the present Civil Revision Petition has been filed.

3.The learned counsel for the petitioner/plaintiff would submit that Jamin Survey No.560/1 has been classified in Re.Survey as Survey No. 77/5 and the same is categorically mentioned in the suit schedule property. During the course of cross examination, the suggestion put-

2/9



CRP(MD). Nos.1460 and 1461 of 2021

forth on the side of the respondent regarding the survey number was denied by the petitioner. However, in the deposition, it has been recorded as if the petitioner admitted the suggestion. He would further submit that the present application has been filed only to recall PW1 for the purpose of correcting the statement, which was wrongly typed and not for any other purpose and to mark the additional documents, which were obtained by the petitioner/plaintiff through RTI. However, without considering all those aspects and without assigning any valid reason, the Court below had dismissed the applications, which warrants interference of this Court. He would further submit that if the suggestions are not permitted to be put, the petitioner/plaintiff would be put to irreparable loss, as he could not able to dislodge the evidence of P.W.1. Hence, he seeks indulgence of this Court to set aside the order impugned in these Civil Revision Petitions.

4.The learned counsel appearing for the respondent would submit that P.W1 was already examined on 29.01.2020 and his evidences were also uploaded in the E-Court Web-site on 20.01.2020. Without taking note of the evidence, that was available, filing an application stating that



CRP(MD), Nos.1460 and 1461 of 2021

mistake was done with regard to survey number is nothing but to fill up the *lacuna* and therefore the pleadings made by the learned counsel for the petitioner is legally un-sustainable. Hence, he prays for appropriate orders.

5.He would also rely upon the judgment of this Court in the case of ***S.Nirmala and others Vs. Shanthi Harikrishnan and others*** reported in ***2024-5-L.W.577***, wherein it had been stated as under:-

“14. This Court concludes that, as provided under [Section 138](#) of the Evidence Act 1872, (Bharatiya Sakshya Adhiniyam 2023 i.e., [Sections 142](#) and [143](#) of BSA 2023):

(i) Only an adverse party is entitled to cross-examine a witness.

(ii) A person whose interests are not adverse to the witness is not entitled to conduct a formal or friendly cross-examination.

(iii) A party with an interest adverse to the witness is entitled to cross-examine the witness, regardless of the array of parties involved; for example, a defendant can



cross-examine co-defendants if their interests are adverse to the witness's testimony.

(iv) If parties' interests are adverse in different aspects, the party whose interest is adverse in a specific aspect has priority in cross-examining the witness before the more heavily contesting party proceeds with the cross-examination of the witness.

(v) Any objections regarding the priority of cross-examination of witness and claims that a party should be barred from cross-examining the witness due to non-adverse interests must be raised before evidence is recorded, and the court should decide these issues immediately.

(vi) If a witness has been cross-examined under oath and an objection arises later concerning the interest of the party who cross-examined the witness, questioning its adverseness and the priority of cross-examination, the previously recorded evidence cannot be eschewed. However, the court should assess the probative value of such evidence in the final evaluation of the case.

In the facts of the case and stated position of law there is no substance or reason to interfere with the order of the learned single Judge in A.No.1912 of 2024 in C.S.No.252 of 1996 dated 26.07.2024. The suit is filed in 1996 and has reached the stage of trial after 24 years. This is a suit for



CRP(MD), Nos.1460 and 1461 of 2021

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partition. The learned counsel appearing for appellants has not even pointed out any serious prejudice. Hence this application, filed without bonafides to protract the proceedings is liable to be dismissed with costs.”

6.I have considered the submissions made by the learned counsel on either side and perused the records.

7.Admittedly, in the judgment relied upon by the learned counsel for the respondent in *S.Nirmala's case (referred supra)*, the Hon'ble Division Bench of this Court had held that *the previously recorded evidence cannot be eschewed. However, the court should assess the probative value of such evidence in the final evaluation of the case.* Similarly, in ***Muthu Goundar Vs. Poosari @ Palaniappan and 4 others*** reported in ***1998 (I) CTC 477***, it had been stated as under:-

“14.In A.Irudayasamy vs. v. Perumal Naidu, 1997 (1) L.W 474 subramani, J. with regard to power of this Court under Section 100 of the Code of Civil Procedure has concluded thus:-

The High Court under S.100, CPC is entitled to take into consideration the question whether the material evidence and



CRP(MD), Nos.1460 and 1461 of 2021

relevant circumstances were considered by the lower courts.

This Court is also entitled to consider whether the finding of the lower appellate court is based on evidence, and whether that evidence is based on pleadings. If the finding of the lower appellate court is based only on surmises or on wrong application of law, and it is not based on evidence or pleadings, this Court is entitled to interfere with that finding.”

8. When there are two versions available, one is relating to documentary and another one is relating to overall facts and circumstances of the case, the documentary evidence will prevail on the overall evidence. Therefore, this Court, without going into the merits of the case, disposed of these Civil Revision Petitions, granting liberty to both parties to put forth their rival contentions before the trial Court and the trial Court shall consider and pass appropriate orders in accordance with law, as expeditiously as possible. Considering the fact that the suit is of the year 2018, the trial Court is directed to dispose of the same, within a period of nine months from the date of receipt of a copy of this order.



CRP(MD). Nos.1460 and 1461 of 2021

WEB COPY No costs. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No
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17.12.2025

To

The Principal District Munsif, Thoothukudi.



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CRP(MD). Nos.1460 and 1461 of 2021

N.SENTHILKUMAR, J.

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CRP(MD). Nos.1460 and 1461 of 2021

17.12.2025