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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.04.2025

CORAM

THE HON'BLE MR. JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD)No.1007 of 2023

and

C.M.P(MD)No.4740 of 2023

Selvaraj

...Petitioner/1st Respondent/1st Plaintiff

Vs.

1.The Idol of Arulmighu Mariyammal Koil,
Samayapuram,
Rep. By the Joint Commissioner/Executive Officer,
Samayapuram,
Mannachanallur Taluk,
Trichy District.

...1st Respondent/Petitioner/Defendant

2.Manikandan

...Petitioner/2nd Respondent/2nd Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the Fair and Decreetal order of the learned Additional District Munsif, Lalgudi, Dated 14-11-2022 in I.A.No.2 of 2022 in O.S.No.148 of 2013.

For Petitioner : M/s.VR.Shanmuganathan

For Respondent : Mr.V.Chandrasekar for R1
No appearance for R2

* * * * *



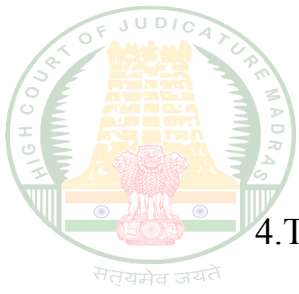
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ORDER

The first plaintiff in O.S.No.148 of 2013, on the file of the Additional District Munsif Court, Lalkudi, has filed the present revision petition challenging the order passed by the trial Court, wherein the trial Court has eschewed the evidence of D.W.1.

2.A perusal of the records reveal that the suit has been filed by the plaintiffs for the relief of bare injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the 'A' schedule property and for consequential reliefs.

3.After the evidence on the side of the plaintiffs was completed, one Mr.Renganathan, who was working as Assistant in the Samayapuram Temple, had filed his proof affidavit as D.W.1. Due to ill health, he could not appear for cross examination. At that stage, the defendant had filed I.A.No.2 of 2022, to eschew the evidence of D.W.1. When the application was heard finally, it was informed that D.W.1, namely, Mr.Renganathan has passed away. The Trial Court has proceeded to eschew his proof affidavit. Challenging the same, the present revision petition has been filed.



4.The learned counsel appearing for the revision petitioner, relying upon the judgment of this Court reported in **2022 (3) CTC 364**, had contended that there is no provision for eschewing the evidence of any one of the witnesses. It is for the trial Court to consider the probative value of each one of the witnesses.

5.There is no dispute that D.W.1 after filing his proof affidavit, without being subjected to cross examination, had passed away. In such circumstances, the defendant temple is intending to examine another staff of the Temple. Since there is no provision under the Indian Evidence Act, for eschewing the proof affidavit of the deceased D.W.1, the order impugned in the revision petition is hereby set aside and the proof affidavit filed by D.W.1 shall continue to be on record. The defendant Temple is at liberty to examine any other staff from their office as D.W.2.

6.With the above said observations, this Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition is also closed.

7.Considering the suit is of the year 2013, the trial Court is directed to dispose of the suit on or before **31.07.2025**.

03.04.2025

Internet:Yes/No
Index:Yes/No



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R.VIJAYAKUMAR, J.

RJR

To

1.The learned Additional District Munsif, Lalgudi.

2.Joint Commissioner/Executive Officer,
The Idol of Arulmighu Mariyammal Koil,
Samayapuram,
Mannachanallur Taluk,
Trichy District.

Copy to:-

The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

C.R.P.(PD)(MD)No.1007 of 2023

03.04.2025