



C.R..P.(PD)(MD).No.2197 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(PD)(MD)No.2197 of 2022

and

C.M.P(MD) No.10226 of 2022

1. Mary Reethal

2. Meethu Kala

... Petitioners/Respondents 3 &4
Defendants 3 and 4

Vs.

Jeyarajan (Died)

1. Anis

2. Aswin Jehosh

3. Ashmi Grace

... Respondents 1 to 3/
Petitioners 2 to 4/
Plaintiffs 2 to 4

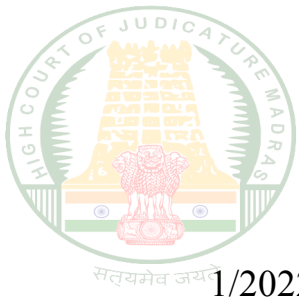
4. Annamal Heil

5. J.Edward Nixon

... Respondents 4 and 5/
Respondents 1 and 2/
Defendants 1 and 2

(Respondents 4 and 5 set *ex parte*)

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 02.09.2022 passed in I.A.No.



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1/2022 in O.S.No.3 of 2011, on the file of the Additional District Court, Padmanabapuram and set aside the same.

For Petitioners : Mr.D.Saravanan

For R1 to R3 : Mr.K.P.Narayanakumar

ORDER

The defendants 3 and 4 in O.S.No.3 of 2011 on the file of the Additional District Court, Padmanabapuram, are the revision petitioners herein.

2. The above said suit was filed for the relief of specific performance of a sale agreement dated 27.08.2009. Pending suit, the first plaintiff had passed away and the second plaintiff namely, Anis, had filed her proof affidavit. However, she had not appeared for cross examination. It is reported by the counsel for the plaintiffs that she had gone abroad. Therefore, the plaintiffs have filed in I.A.No.1 of 2022 to eschew the chief affidavit of P.W.1 and examine the third plaintiff as PW.1. This application was allowed by the trial Court on 02.09.2022. Challenging the same, the present Civil Revision Petition has been filed.



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3. According to the learned counsel appearing for the revision petitioners, the second plaintiff, who was examined as P.W.1, has gone abroad only to attend the maternity care of her daughter and therefore, she is likely to return at any point of time. Hence, the chief affidavit of P.W.1 ought not to have been eschewed.

4. Per contra, the learned counsel appearing for the respondents 1 to 3 herein had contended that since the second plaintiff had not returned from abroad unless her chief examination is eschewed, they would find it difficult to examine the other witnesses on the side of the plaintiffs.

5. Heard both sides.

6. The plaintiffs have sought to eschew the chief affidavit of P.W.1 on the ground that she had gone abroad and she has not subjected herself to cross examination. This application has been allowed. According to the learned counsel appearing for the respondents, she can return at any point of time and she could be subjected to cross examination.



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7. Considering the above said facts, the order passed in I.A.No.1 of 2022 by the trial Court is hereby set aside and the chief affidavit of Mrs.Anis, who was examined as P.W.1 shall be retained in the records. In case, if she returns before closure of evidence, she may be subjected to cross examination. Otherwise the evidence may be eschewed by the trial Court. There will not be any impediment for the plaintiffs to examine other witnesses on their side.

8. With the above said observations, this Civil Revision Petition stands allowed to the extent as stated above. There shall be no order as to costs. Consequently connected Miscellaneous petition stands closed.

07.02.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Additional District Court,
Padmanabapuram.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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