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C.R.P.(PD)(MD) No.3013 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	02.01.2025
Pronounced on	.01.2025

CORAM

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No. 3013 of 2024 and
CMP(MD).No.17198 of 2024

Pitchaimani

... Petitioner / Plaintiff

Vs.

Parthiban

.. Respondent / defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 15.10.2024 passed in I.A.No.4 of 2024 in O.S.No.288 of 2017 on the file of the Additional District Munsif Court, Lalgudi, Trichy District.

For Petitioner : Mr.M.R.Sreenivasan

For respondent : No appearance

ORDER

This revision is preferred against the fair and decreetal order, dated 15.10.2024 passed in I.A.No.4 of 2024 in O.S.No.288 of 2017 on the file



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of the Additional District Munsif Court, Lalgudi, Trichy District.

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2. The revision petitioner as plaintiff filed the above suit in O.S.No. 288 of 2017 on the file of the Additional District Munsif Court, Lalgudi, Trichy District for permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. According to the revision petitioner / plaintiff he is in possession and enjoyment of the suit property and the revenue records stands in the name of the plaintiff. According to the plaintiff, the respondent / defendant approached him to sell the suit property for a meagre sum and the same was refused by the plaintiff. Thereafter, the defendant attempted to dispossess the plaintiff from the suit property on 01.11.2017 with the help of his henchmen. Hence, the plaintiff preferred a police complaint. However, the police officials directed the plaintiff to approach the Civil Court for remedy. It is further submitted that though the plaintiff's evidence was closed, he filed an application to summon the Village Administrative Officer to establish the fact that the revenue records stands in the name of the plaintiff. However, the trial Court without considering the necessity of the said application erroneously dismissed the application. Aggrieved by this the revision petitioner /



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plaintiff filed the present revision petition.

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3. The learned counsel appearing for the revision petitioner / plaintiff would submit that the trial Court ought not to have dismissed the said application for the reason that the name of the proposed witness was not shown in the list of witnesses in the plaint. To support his case, he would further submit that Order 26 Rule 1(A) CPC enables a party to bring the witness even without the summon. Hence, prayed for setting aside the order passed in I.A.No.4 of 2024 in O.S.No.288 of 2017.

4. In spite of notice served on the respondent did not appear either in person or through counsel. Heard the learned counsel for the petitioner and perused the materials available on record.

5. The revision petitioner / plaintiff assailed the order, dated 15.10.2024 passed by the learned Additional District Munsif, Lalgudi in I.A.No.4 of 2024 praying for issuing a witness summons to the village Administrative Officer. The objections of the respondent / defendant before the trial Court is that the revision petitioner / plaintiff failed to show the above witness in the list of witness as mandated under 16 Rule 1



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of CPC and therefore, he prays for dismissal of the said application. The plaintiff having failed to include the witness in the list of witness as contemplated under Order 16 Rule 1 of CPC, it is incumbent on the petitioner / plaintiff to show sufficient cause for seeking issuance of witness summons to additional witness under the provisions of Rule 1 (3) of 16 CPC. Since the documents relied on by the plaintiff are revenue records, examination of this witness is necessary for the purpose of determining the real question of controversy between the parties. Since it is a suit for permanent injunction, the plaintiff has to establish his possession in the suit property either by oral or documentary evidence. The plaintiff submits that the revenue records stands in the name of the plaintiff, the evidence of the Village Administrative Officer is necessary for the purpose of determining the real question of controversy between the parties. Moreover, in the Judgment reported in **2005(4) SCC 480 (Kailash Vs. Nanhku and others)** the Hon'ble Supreme Court has held that the provisions under Order 16 is discretionary and not mandatory. Therefore, in the present case, if the revision petitioner / plaintiff is denied of the opportunity of examining the additional witness for technical lapse of non inclusion of all the witnesses name in the list of witnesses it would result in mis-carriage of justice. Therefore, I am of the view that the trial



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Court has committed an error in dismissing the said application and the same is liable to be set aside and accordingly set aside.

6. In the result, this Civil Revision Petition is allowed setting aside the order, dated 15.10.2024 passed in I.A.No.4 of 2024 in O.S.No.288 of 2017 on the file of the Additional District Munsif Court, Lalgudi, Trichy District. No costs. Consequently, the connected Miscellaneous Petition is closed.

.01.2025

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

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The Additional District Munsif Court, Lalgudi, Trichy District.



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K.GOVINDARAJAN THILAKAVADI, J.

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Pre-Delivery Order made
in
C.R.P.(MD) No. 3013 of 2024 and
CMP(MD).No.17198 of 2024

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