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C.R.P. No.1505 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-04-2026

CORAM

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.R.P. No.1505 of 2023
and C.M.P. No.9933 of 2023

Dhatchanamoorthy

Rep. By his Power Agent Mrs. Lakshmi ... Petitioner/ Respondent/ Plaintiff

Vs

Valarmathi

... Respondent/ Petitioner/ Defendant

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair & Decreetal Order dated 13.12.2022 made in I.A.No.478 of 2022 in O.S.No.370 of 2013 on the file of the I Additional Subordinate Judge, Villupuram.

For Petitioner : Mr. C. Prabakaran

ORDER

This Civil Revision Petition has been filed to set aside the order dated 13.12.2022 made in I.A.No.478 of 2022 in O.S.No.370 of 2013 on the file of the I Additional Subordinate Judge, Villupuram.



2. The facts leading to filing of this civil revision petition is that, the petitioner herein is the wife as well as the Power Agent of the original plaintiff namely Dhatchanamoorthy, who had instituted a suit in O.S.No.370 of 2013 against the respondent herein, for the relief of specific performance based on the sale agreement dated 28.08.2007. During the trial, the original plaintiff was examined as P.W.1 and Exs.A.1 to A.5 were marked through him. Subsequently, it has been stated that, the original plaintiff/ Dhatchanamoorthy had gone missing from 22.03.2018 and in this regard, a man-missing case in Crime No.143 of 2018 was also registered. Thereafter, as the Power Agent of the original plaintiff, the petitioner has come forward to continue the suit on behalf of the original plaintiff. Thereafter, she had come forward to adduce evidence as P.W.2 and through her, exhibits were also marked. At this juncture, since the husband of the petitioner/ P.W.1 after filing of chief examination was not subjected to cross examination, the respondent herein/ defendant filed a petition to eschew the evidence of P.W.1 and the exhibits marked through him. Though, the P.W.2, who is the Power Agent on behalf of the original plaintiff and as per law, she is entitled to carry out the acts of her Principal, to continue the suit, file counter and also to depose on behalf of the Principal, she objected to remove the evidence adduced by her husband/ P.W.1 from the file. However, the Trial Court has taken a view that, since P.W.1 has not come forward to subject himself for cross examination, keeping the

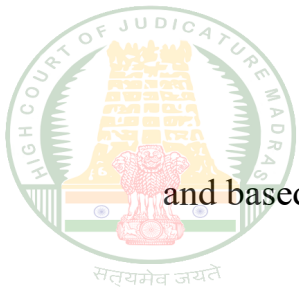


evidence of P.W.1 in the file would not serve any purpose and also by relying on various judgments of this Court, the Trial Court eschewed the evidence of P.W.1. Aggrieved over the same, the petitioner has come forward with this Civil Revision Petition.

3. The learned counsel appearing for the petitioner submitted that, since the original plaintiff namely Dhatchnamoorthy was examined as P.W.1 and subsequently, he was gone missing and he had already tendered his evidence, there is no necessity for eschewing his evidence, instead adverse inference may drawn for non-submitting himself in cross examination. He further submitted that, if the evidence of the P.W.1 is eschewed or adverse inference is taken, both having same effect, hence the same is not necessary.

4. Heard the submissions made on both sides and perused the materials available on record.

5. This Court has gone through the order passed by the Trial Court, which is passed by relying on the various previous judgments to the effect that, once the witness has not come forward to subject himself for cross examination, it is the denial of opportunity to the opponent, to disprove the claim, hence the incomplete evidence of a witness shall not be retained on record. This Court is of the view that the findings of the Trial Court is proper,



and based on valid reasons.

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6. It is also stated that P.W.1 was examined and exhibits were also marked through him, however on careful perusal of the order of the Trial Court, it only reveals that, some of the documents were marked as exhibits through P.W.1 and further, P.W.2 was also examined and exhibits again were marked through her. In such a case, keeping only the oral evidence of P.W.1 will not serve any purpose, hence I am of the view that, once again restoring the evidence of the P.W.1, on the file is not necessary.

7. Accordingly, this civil revision petition is dismissed. Consequently, connected civil miscellaneous petition stands closed. There shall be no order as to costs.

01.04.2026

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To

The I Additional Subordinate Judge,
Villupuram.



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K. RAJASEKAR, J.

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