

(2011) 11 MAD CK 0140

Madras High Court (Madurai Bench)

Case No: C.R.P. (PD) No. 711 of 2009 and M.P. No. 1 of 2009

Subbammal alias
Gandhiammal and
Sathasivam

APPELLANT

Vs

Krishnan alias Kittu and
Rajendran

RESPONDENT

Date of Decision: Nov. 1, 2011

Hon'ble Judges: M. Jaichandren, J

Bench: Single Bench

Advocate: D. Rajkumar for Mr. M.P. Senthil, for the Appellant; No Appearance, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Honourable Mr. Justice M. Jaichandren

1. In spite of the Court notice having been served on the respondents and their names having been printed in the cause list there is no appearance on behalf of the respondents.
2. This Civil Revision Petition has been filed against the order passed by the District Munsif Court, Cheranmahadevi, dated 21.1.2009, made in I.A. No. 521 of 2008, in O.S. No. 133 of 2004.
3. The petitioners are the defendants in the suit, in O.S. No. 133 of 2004, filed by the respondents herein. The said suit had been filed by the respondents, praying for a decree of permanent injunction against the petitioners herein, who are the defendants in the suit. The petitioners had filed an interlocutory application in the said suit, in I.A. No. 521 of 2008, requesting the trial Court to permit the examination of the second defendant, as a witness, at the stage of the trial, since, the second defendant was the owner of the property, said to have been purchased by the petitioners.

4. The trial Court, having accepted the fact that the law provides for such examination of the second defendant, as a witness, as prayed for by the petitioners, it had stated that there was no proper reason shown by the petitioners for not having examined the second defendant, at an earlier stage.

5. The petitioners had stated that the second defendant could not be examined on the day assigned for his examination, as he had been unwell on the said date. However, the trial Court had rejected the request of the petitioners, erroneously, without giving proper reasons for passing the order rejecting the request of the petitioners.

6. In view of the averments made by the Learned Counsel appearing on behalf of the petitioners and on a perusal of the records available, it is found that the trial Court had not given proper reasons for rejecting the request of the petitioners, even though it had stated that there was no prohibition in law, for examining the second defendant, as a witness. Therefore, this Court finds it appropriate to set aside the order, dated 21.1.2009, made in I.A. No. 521 of 2008, in O.S. No. 133 of 2004. The trial Court is directed to permit the petitioners to examine the second defendant, as a witness, as per law. Accordingly, the civil revision petition stands ordered. No costs. Consequently, connected miscellaneous petition is closed.