

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2015

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.R.P (NPD) No.920 of 2015

P.Rajasekar

... Petitioner

Vs.

1.K.S.Vijayakumari
2.Balamani
3.Mohanasundaram
4.Shanmugam @ Jambu
5.E.R.Natarajan
6.Kandasamy
7.Krithika Sivaprakasam
S.Nachimuthu
8.Selvarajan
9.Purushothaman

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to issue a writ of Mandamus against the fair and decreetal order dated 11.08.2014 made in I.A.No.237 of 2014 in A.S.No.85 of 2013 on the file of the Principal District Court, Erode.

For Petitioner : Mr.N.Manokaran

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ORDER

The easier way to avoid a Court from proceeding with the matter is to file an application. This case is also an outcome of such exercise made by the

trial Court advocate to avoid argument in the appeal suit. The petitioner herein along with another filed suit for partition. The said suit was decreed against which the defendants filed A.S.Nos.67, 85, 102, 103 and 104 of 2013 before the lower appellate Court. In all the Appeal Suit, the appellants have argued the matter and the matter is posted for petitioner's arguments from 15.04.2014 onwards. Finally, when the matter was posted on 25.07.2014, an attempt was made to take adjournment and the appellate Court expressed its displeasure in the way in which the adjournments are being sought and finally posted the matter on 18.08.2014. At that point of time only, I.A.No.237 of 2014 was filed on 02.08.2014 seeking appointment of Advocate Commissioner under Order XXVI Rule 9 and Section 151 CPC to visit the property and find out the new construction being put up by the respondents in the undivided properties and if the respondents put up construction in the properties, the respondents should not claim any equity in future at the time of final decree proceedings. The said petition was dismissed holding that it is a device to avoid the court proceedings or avoiding arguing the appeal suit. The said order is under challenge before this Court.

2. The learned counsel for the petitioner very strenuously argued that the application has been filed to lessen the burden of the trial Court as well as the appellate Court so as to prove that the respondent put up construction

subsequent to the passing of the preliminary decree and in the final decree application, the respondent should not claim any equity because of the permanent superstructure being put up by the respondent. He would also find fault with the appellate Court order stating that there is no intention on the part of the petitioner to prolong the matter.

3. It is true that the plaintiffs have obtained preliminary decree. Subsequently, various appeals have been filed by the defendants and they have argued the appeal suits before the appellate Court whereas the petitioner herein deliberately failed to argue the matter in time, after the arguments of the appellants in all the appeal suit was over and the appeals were posted for petitioner's arguments on 15.04.2014. For more than three months, the petitioner was successful in dragging on the matter without arguing the matter. Again the matter was posted on 25.07.2014, on which day the appellate Judge taking note of the earlier adjournments, expressed his displeasure about the adjournments sought for by the petitioners and posted the matter finally on 18.08.2014 and thereafter only wisdom dawned on the petitioner and filed petition under Order XXVI Rule 9 CPC. It is to be seen that the Appeal suit was filed as early as in 2013 and for one year, the matter is pending in the appellate stage and thereafter for his argument for more than four months. The petitioners could have utilized the earliest opportunities and only when he was

driven to argue the matter finally, the application has been deliberately taken to avoid argument.

4. It has become habit rather routine before the trial Courts to take out an application to purchase time or to avoid proceeding with the matter. If such practice is allowed to be continued, the system cannot effectively function and the matter would be prolonged for ever and unnecessarily judiciary will be blamed for the delay. When the parties approach the Court, especially the plaintiff, they should be prompt in arguing the matter. Mainly because the petitioner is the respondent in the appeal suit, it does not mean that he can prolong the matter.

5. The facts narrated above would show that the petitioner has not shown any interest in arguing the matter. Thereafter only the present application has been filed which is rightly dismissed by the appeal Court. It is always open to the petitioner to put forth his points before the trial Court at the time of final decree proceedings. It is not as if the case is going to be over now itself. The appeal suits have been filed only against the preliminary decree. Even if the respondents put forth their defence, it is always open to the petitioner to discredit the evidence being produced by the respondents. The application was rightly dismissed by the appellate Court and the same

cannot be interfered with and this civil revision petition is liable to be dismissed.

6. Accordingly, the Civil Revision Petition is dismissed. No costs.

06.03.2015

Index: yes/no
Internet: yes/no
gpa

To

The Principal District Court
Erode

N.KIRUBAKARAN,J.

gpa

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