



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.08.2015

C O R A M

THE HONOURABLE Mr. JUSTICE P.DEVADASS

C.R.P. (MD).No.1806 of 2015(PD) and M.P. (MD).No.2 of 2015

WEB COPY

1.M.S.Rajendran

2.M.S.Gopal

...Petitioners/Petitioners 1& 2/Defendants 1 & 2

Vs

1.Saroja

2.Sathyavathi

3.Dr.Thamizh Selvi ..Respondents 1 to3/Respondents 1to3/Plaintiffs 1 to3

4.Susila

5.R.Meenakshi

6.R.Vidhya

7.R.Poornima

8.G.Abirami

9.G.Umamaheswari

10.G.Dhanalakshmi

11.Praveen

12.S.Nirmala

13.Preetha ...Respondents 4 to 13/Petitioners 4 to13/Defendants 4 to 13

Petition filed under Article 227 of the Constitution of India to set aside the Order dated 06.07.2015 by the learned IV Additional District Judge, Madurai made in I.A.No.231 of 2015 in O.S.No.54 of 2006.

For Petitioners ... Mr.R.Vijayakumar

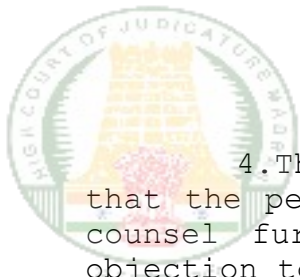
For R1 to R3 ... Mr.PT.S.Narendravasan

O R D E R

This revision has been directed by the defendants as against the dismissal of then I.A.No.231 of 2015 in O.S.No.54 of 2006 by the learned IV Additional District Judge, Madurai.

2.The matter arises out of a partition suit. Both sides are relatives. They are fighting since 2006. The trial is going on. The suit has been part-heard. The defendants wanted to examine one Muthirulappan as a witness. The respondents/plaintiffs contended that it is an attempt to derail the trial, it is a delaying tactics. The trial Court concurred with the said submission and dismissed the said I.A.

3.The learned counsel for the revision petitioner contended that the examination of Muthirulappan is very much essential to establish their case, as they have pleaded in their written statement and also in their additional written statement. In the suit schedule item Nos.1 and 2 also have been included showing that they are also available parties. However, when their mother was alive and their maternal uncle Muthirulappan was made a power agent and through him the said item Nos.1 and 2 have been sold. To establish this aspect examination of Muthirulappan become very much essential. However, the said Muthirulappan is dodging. He is the husband of the first plaintiff.



4. The learned counsel for the revision petitioner also submitted that the petition for issuance of summon has been returned. The learned counsel further submitted that even the plaintiffs have endorsed no objection to examine Muthuirulappan, if they could able to produce him.

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5. The learned counsel for the revision petitioner would submit that, that is how steps have been taken to produce him by issuance of summons.

6. On the other hand, the learned counsel for the respondents/plaintiffs would submit that D.W.3 was examined and the suit has been adjourned from time to time for examination of further D.Ws and one reason or other, the revision petitioners/defendants dragged the matter. Even at one stage, the Trial Court imposed a cost of Rs.500/-. The learned counsel for the respondents also submitted that now the suit has reached the stage of arguments.

7. The learned counsel for the respondent submitted that it cannot be said that the Court have no power, but, it should not be exercised in a routine manner. It must be in rare and exceptional circumstances.

8. In this connection, the learned Counsel for the respondents cited the following decisions;

(i) In VADIRAJ NAGGAPPA VERNEKAR (DEAD) V SHARADCHANDRA PRABHAKAR GOGATE, (2009) 4 SUPREME COURT CASES, 410.

(ii) In M/S.BAGAI CONSTRUCTION THR.ITS PROPRIETOR LALIT BAGAI V. M/S.GUPTA BUILDING MATERIAL STORE, (AIR 2013 SC (CIVIL) 1121).

(iii) In R.KALAIARASAN V M.LINGAM, (2010(1) MWN (CIVIL) 730).

(iv) In K.K.VELUSAMY V N.PALANISAMY, (2011) 11 SUPREME COURT CASES 275.

9. I have considered the rival submissions, perused the materials on record, the impugned order and the decisions cited.

10. There cannot be quarrel over the preposition of law elaborated by the learned counsel for the respondents. But no decision can be made or cannot be stated that it will have universal application regardless of facts. Application of case law depends on the facts and circumstances of each case.

11. It is a partition suit. Parties are testing their might to the extend of their mite. Ofcourse, the problem or the completing of the evidence of D.W.3. Inclusion of item Nos.1 and 2 in the suit schedule has been found fault with by the defendants, pleading in their written statement that the defendants opposes the inclusion of the said items. The plaintiffs want to include those two items, but, the defendants wants to exclude those two items from the suit. The defendants states that Muthuirulappan, the husband of first plaintiff sold those item as power agent, so his examination becomes necessary, but the trial Court insist upon the production of very Muthuirulappan.

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12. The trial Court cannot be faulted because it apprehended that it may be a ruse to prolong the matter. Therefore, the trial Court gave



a opportunity to the defendants, but it cut their wings, so that, this litigation should not prolong further.

13. But the revision petitioners find it very difficult for Muthuirulappan to the witness box. It is pertinent to note the submission of the learned counsel for the respondent that as on date, summons were not served upon the said witness, in this connection, the learned counsel for the petitioner drawn our attention to Order 16 Rule 10(1)(2) C.P.C., that in case, if the said witness dodges, the Court has got the ample power to take coercive action. It is only an assumption. What is in the mind of Muthuirulappan, he may elect to come or he may preferred to stay in his house. But only after satisfying the trial Court, the power of the Court under Order 16 Rule 10 C.P.C., can be invoked. Thus an opportunity should be given to a party, but at the same time, no opportunity should be given to any party to prolong the matter.

14. In such view of the matter, we find fault with the impugned order of the trial Court.

15. In the circumstances, ordered as under:

(i) The impugned fair and decretal order are set aside.

(ii) The revision petitioner shall represent the witness summons to Muthuirulappan within one week, in default, the revision petitioner will loose their chance of summoning Muthuirulappan.

(iii) Thereafter, the trial Court shall issue summons to Muthuirulappan.

(iv) In case, if the need arises, the trial Court shall invoke its power under Order 16 Rule 10 C.P.C.

(v) In any case, the suit in O.S.No.54 of 2000 on the file of the IV Additional District Judge, Madurai shall be disposed of within three months from the date of issuance of summons.

(vi) As and when the problem of witness Muthirulappan is over, if need be, the plaintiffs may file their additional written arguments, thereafter, the revision petitioner shall argue orally and if need by present their written arguments. It is made clear that both sides counsel shall give their fullest co-operation to the trial Court to complete the trial within the time prescribed.

16. Accordingly, this civil revision petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

/TRUE COPY/

Sub Assistant Registrar

To

1 The IV Additional District Judge, Madurai.

2. The Principal District Judge, Madurai.

+1cc to Mr. R. Vijaya Kumar, Advocate SR.No.48982

+1cc to Mr. PT. S. Narendravasan, Advocate SR.No.48965

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