



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P.PD(MD)No.2744 of 2015

and M.P. (MD)No.1 of 2015

R.Chokkalingam

... Petitioner

Vs.

K.Gnanasekaran @ Selvamani

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, as against the fair and decretal order passed in I.A.No.271(a) of 2015 in O.S.No.675 of 2010 on the file of the Principal District Munsif Court, Karur, dated 07.10.2015.

For Petitioner : Mr.V.K.Vijayaragavan

ORDER

Impugning the fair and decretal order dated 07.10.2015 made in I.A.No.271(a) of 2015 in O.S.No.675 of 2010 on the file of the learned Principal District Munsif, Karur, this Civil Revision petition is filed by the revision petitioner herein, who is the plaintiff in the suit in O.S.No.675 of 2010 whereas, the respondent herein is the defendant.

2.It is apparent from the records that the petitioner has filed the above suit as against the respondent, seeking the relief of permanent injunction in respect of two items of the suit property. The suit has been contested by the respondent by filing his written statement. It is also to be noted that the revision petitioner being the plaintiff has filed an application in I.A.No.712 of 2012 for appointing an Advocate Commissioner. That application was allowed and an Advocate Commissioner was also appointed. The Advocate Commissioner had also executed the commission warrant and after his inspection, he had filed his report on 12.02.2014 along with a plan.

3.Admittedly, the revision petitioner being the plaintiff had not filed his objection immediately after filing of the Commissioner's report. But, now he came forward with the above said interlocutory application in I.A.No.271(a) of 2015 under Section 5 of the Limitation Act, to receive his objection to the Commissioner's report after condoning the delay in filing the said



objection. But, the learned Trial Judge in the impugned order has found that since the objection is filed belatedly after a period of one year, the belated objection could not be received and taken on record. Challenging this order dated 07.10.2015 this Civil Revision petition is filed.

4.Insofar as this revision is concerned, the scope is very limited. There is no time limit prescribed either in the Code of Civil Procedure or any other law to file objection to the Commissioner's report. Now the trial is yet to be commenced.

5.Even in case, if the objection is received and taken on record, no prejudice would be caused on the other side. This Court can also say that if the objection filed by the revision petitioner is not received, even at this stage, then he may not be having any opportunity to put forth his objection to the Commissioner's report thereafter, i.e., after the commencement of the trial. The act of the Court would be brought under the amplitude of lacking of natural justice. In this connection this Court, on considering the submission made by Mr.V.K.Vijayaragavan, learned counsel for the petitioner finds that it may be expedient, in the interest of justice that the objection filed by the revision petitioner plaintiff could be taken on record as no prejudice would be caused on the other side.

6.This Court is of the considered view that the finding given by the Trial Court in the impugned order is highly irrational and seems to be perverse in nature, which requires interference of this Court.

7.Keeping in view of the above fact, this Civil Revision petition is allowed at the admission stage itself and the impugned order dated 07.10.2015 is set aside and the application in I.A.No.271(a) of 2015 is allowed and the Trial Court is directed to take the objection filed by the revision petitioner / plaintiff to the Commissioner's report, on record and dispose of the suit in O.S.No.675 of 2010 on merit as expeditiously as possible. No order as to costs. Consequently, connected M.P.is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar



To

The Principal District Munsif Court, Karur.

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+1cc to Mr.V.K.Vijayaragavan, Advocate Sr.No.72523

nbj

AA/AAL-MPA/09.02.2016/3p-3c

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