

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2016

CORAM

THE HONOURABLE **Mrs. JUSTICE. S.VIMALA**

C.R.P. (NPD) Nos.1804 to 1808 of 2015
and Tr.C.M.P.No.306 of 2015 to 308 of 2015
and connected M.Ps

C.R.P.(NPD) No.1804 of 2015

P.Rajasekar

... Petitioner

Vs.

1. Selvarajan
2. Balamani
3. Mohanasundaram
4. Shanmugam @ Jambu
5. E.R.Natarajan
6. Kandasamy
7. K.S.Vijayakumari
8. Kiruthika Sivaprakasam
- S.Nachimuthu (died)
9. Purusothaman

... Respondents

Prayer :- Civil Revision Petitions (NPD) filed under Article 227 of the Constitution of India to set-aside the fair and decreetal orders made in I.A.Nos.65, 67, 70, 72 and 74 of 2015 in A.S.Nos.67, 85, 102, 103 and 104 of 2013, respectively, dated 08.04.2015 on the file of the Principal District Court, Erode.

For Petitioner : Mr. S.Parthasarathy, Sr. Counsel,
for, M/s. A.Muthuraman
For Respondents : Mr. K.K.Ramakrishnan, for R-1,
Mr. V.Bharathidasan, for R-7 to R-9

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COMMON ORDER

The suit in O.S.No.441 of 1996 was filed by one Balamani and P.Rajasekar, seeking partition, separate possession, permanent injunction and other incidental reliefs. The suit was decreed on 30.10.2012, as prayed for. Challenging the decree and judgment, five appeals were filed by D-8, D-5, D-1, D-9 and D-6, respectively, in A.S.No.67 of 2013 (R.Selvarajan), A.S.No.85 of 2013 (K.S.Vijayakumari), A.S.No.102 of 2013 (Mohanasundaram), A.S.No.103 of 2013 (Purushothaman) and A.S.No.104 of 2013 (Kiruthika Sivaprakasam).

2. Pending appeals, Applications were taken out by the Revision Petitioner herein in I.A.No.65, 67, 70, 72 and 74 of 2015 praying to reopen the appeals for further arguments, respectively, in A.S.No.67, 85, 102, 103 and 104 of 2013.

3. Reopening was sought for on the following two grounds, viz., (i) the court reserved the case for judgment, without hearing the reply arguments of the petitioner / second respondent; and (ii) the second respondent had to take out an application for appointment of Commissioner to inspect and measure the suit properties.

4. Citing the observation made by the trial court that the eighth defendant in O.S.No.441 of 1996 failed to locate his property through appointment of an advocate commissioner, the Court below dismissed the application for reopening and while dismissing the Application, the following facts and circumstances have been taken note of:-

(i) The appeals have been heard, once before by the predecessor on 17.03.2014 and later the cases have been heard again for the second time in the month of November 2014, by the present Presiding Officer.

(ii) The case was reserved for judgment on 19.12.2014.

(iii) I.A.No.50 of 2015, which was filed to reopen the appeal for further hearing, was also allowed.

(iv) Despite three adjournments given, reply argument was not placed and therefore, the case was again reserved for judgment.

(v) Thereafter, a new counsel had entered appearance and sought for reopening of the appeals.

(vi) When the Court was ready to grant adjournment for one or two days for the purpose of hearing arguments, the learned counsel was not willing to avail one or two days and was insisting upon adjournments to suit his convenience to argue the matters and thus

the matters came to be closed.

5. Pointing out the above said details, the Court below has given a finding that the contention of the petitioner that the petitioner was not given an opportunity to put forth the reply arguments cannot be correct.

6. So long as the request for reopening the case, for the purpose of filing an application for appointment of the Advocate Commissioner is concerned, the Court below has pointed out the following circumstances:-

(i) When the trial court has given a finding that the eighth defendant in the suit failed to locate his property, one would expect the eighth defendant to come forward with an application for the appointment of the Advocate Commissioner. But, strangely, the request for taking out an application is forthcoming not from the eighth defendant, but from the petitioner herein.

(ii) The application for appointment of the Advocate Commissioner has been filed two years after the filing of the appeal and critically, at the stage, when the case has been reserved for judgment after hearing the arguments.

(iii) The petition for appointment of the Advocate Commissioner had been filed once before in I.A.No.237 of 2014, which was dismissed on 11.08.2014. When it was pointed out by the Court, it has been explained by saying that the purpose of I.A.No.237 of 2014 in A.S.No.85 of 2013 and the present application (for appointment of commissioner) are for totally different. For each and every purpose, a commission application cannot be separately filed as also repeatedly filed in the same proceeding. After the dismissal of I.A.No.237 of 2014, no revision or appeal has been preferred. Therefore, the Court gave a finding that the second ground is also not sustainable.

7. After giving so many reasons, supported by evidence, the Court below has chosen to dismiss the Application for appointment of the Advocate Commissioner, after pointing out that the filing of these applications would amount to misuse of process of law. The dismissal of those applications are under challenge in Civil Revision Petitions Nos.1804 to 1808 of 2015.

8. The plaintiffs in the suit / respondents 1 and 2 in all the Appeal suits, filed transfer petitions in Tr.C.M.P.Nos.305, 306 and 307 of 2015, seeking transfer of A.S.No.102, 104 and 85 of 2013 from the

file of the learned Principal District Judge, Erode, to any other competent court in Erode District.

9. The said transfer is sought on the ground that reopen petitions and the petition for appointment of advocate commissioner were dismissed by the Presiding Judge and that the matters were posted for judgment to 27.05.2015.

10. As the question of law and fact involved are same in all the matters, common order is passed in all these Revision Petitions.

11. The common order passed by the Court below, explained supra, is tell-tale and it does not require any further elaboration. After the case being reserved for judgment, deliberately missing the opportunity to argue the matter after the case being reopened, filing of the subsequent applications to reopen the case, after engaging some other counsel are clearly attempt made to prolong the proceedings. Similarly, filing application for appointment of commissioner, after two years of filing the appeal and after the case being reserved for judgment, are towards procrastinating the proceedings and it is a clear case of the abuse of the process of law.

12. The Court below has rightly pointed out that when the finding is against the eighth defendant and the eighth defendant himself has taken out separate appeal (A.S.No.67 of 2013), the application for appointment of advocate commissioner is not taken out by the eighth defendant and it has been taken out by the second respondent / Revision Petitioner herein. This circumstance also would give limelight to the intention of the Revision Petitioner to protract the proceedings.

13. As rightly pointed out by the Court below, when an earlier application for appointment of the advocate commissioner is dismissed, there is no further scope for taking out a similar application without challenging the earlier order. Therefore, the dismissal of the application for appointment of the advocate commissioner is perfectly justified.

14. So far as the application for reopening the case for reply arguments is concerned, even though it is evident that it is the opportunity that is lost by the petitioner, still the learned counsel for the Revision Petitioner would submit that, by taking into account the

interest of the invisible parties to the litigation, the Court must give one more opportunity to submit the reply arguments and that the Revision Petitioner would be ready to comply with any stringent condition to be imposed by this Court, towards enabling the lower Court to give speedy disposal.

15. The conduct of the learned counsel before the Court below, in insisting upon his personal convenience, even in case of the petition for reopening of the case being allowed, cannot be appreciated. The request for time, according to convenience, is not made at a time when the matter is to be heard afresh. But it is made at a time when the matter is already heard and the case had been reserved for judgment. When too many matters are heard on a single day, continuous hearing is helpful for the Court to keep it in memory and also for the purpose of understanding.

16. The learned counsel should have insisted upon the immediate hearing, if at all the learned counsel is interested in the early outcome of the litigation. Instead, the learned counsel had insisted upon his own convenience to place his arguments after the case was reserved for judgment. That conduct is not praise worthy.

17. "It is not what you say that matters, but how you say that matters more", is the saying. This should have been kept in mind when an indulgence is required from the Court. Unfortunately, that has not been done. However, the facts detailed in earlier paragraphs reveal that the second counsel has entered appearance at the fag end of the case. Therefore, de hors the representation made by the counsel, this Court is inclined to grant opportunity to put forth the written arguments in the interest of the substantive justice, in which a litigant is always interested.

18. This Court wishes to point out that the lawyers are the solders of justice and defender of rights. It is their duty to protect the right to dignity, divinity and equality of every member of the society. The lawyers as a whole have a duty not only to the clients, on behalf of whom they appear, but also towards: (a) duty to oneself, (b) duty to state, (c) duty to his profession and (d) duty to the court.

19. Considering the duty towards the Court and to the society, the learned counsel appearing before the Court below ought not to have insisted upon the prolonged adjournment. In any event,

considering the interest of the respondents (in the appeal), the matter is remitted back to the Court below subject to the following conditions:-

(i) The Revision Petitioner herein is given liberty to file the written arguments / reply arguments within a period of two weeks from the date of receipt of a copy of this order, after providing a copy of the written arguments to the other side.

(ii) If any clarification is needed on the reply arguments to be filed by the Revision Petitioner, it is open to the Court to take up the case for further hearing, either suo motu or at the request of the learned counsel for the respondents.

(iii) on the filing of the reply arguments / on the completion of further hearing, the Presiding Officer shall dispose of the appeal, as expeditiously as possible, preferably within a period of two weeks thereafter.

20. In the result, **the Civil Revision Petitions are disposed of, on the above terms.** In view of the order passed in the Civil Revision Petitions, no further order is required in the Transfer Civil Miscellaneous Petitions, as the reasons given in the Civil Revision Petitions are sufficient for the disposal of the Transfer Civil

Miscellaneous Petitions. Hence, **the Transfer Civil Miscellaneous Petitions are closed**. Consequently, the connected MPs are closed.

No costs.

03.02.2016

Index : Yes / No

Web : Yes / No

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Note to office.: Issue order copy on 03.02.2016

S.VIMALA, J.,

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To

1. The Principal District Court, Erode.
2. The Section Officer, V.R.Section,
Madras High Court, Chennai - 104

C.R.P. (NPD) Nos.1804 to 1808 of 2015
& Tr.C.M.P.No.308 of 2015 and 306 of 2015
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