

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.2512 of 2015
and M.P.No.1 of 2015

N.A.Mohd. Jan [deaf and dumb]
Rep by his mother and natural guardian

... Petitioner

Vs

A.Subramaniam

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 30.04.2015 made in I.A.No.64 of 2015 in O.S.No.222 of 2006 passed by the District Munsif Court, Arakkonam and to allow this petition.

For Petitioner : Mr.G.Veerapathiran

For Respondent : Mr.J.Shanmuga Sundara Babu

ORDER

The respondent has entered appearance through counsel. The arguments advanced by Mr.G.Veerapathiran, learned counsel for the petitioner and by Mr.J.Shanmuga Sundara Babu, learned counsel for the respondent are heard.

2. The sole defendant in the Original Suit is the petitioner in the Civil Revision Petition. Suit is in the part heard stage, as the proof affidavit of PW1 has

been accepted as his evidence in chief-examination and the cross-examination of PW1 is yet to be commenced. Under the said circumstances, the revision petitioner filed an application in I.A.No.64 of 2015 praying for framing of an additional issue, based on the defence plea raised in the written statement. The said plea relates to the correctness of the valuation based on the kist value. According to the petitioner such mode of valuation is not proper and on the other hand, the actual market value of the suit property should have been taken as the value of the relief.

3. When such an issue has been raised and the same has also been disputed, the learned trial Judge could have very well framed an issue regarding the correctness or otherwise of the valuation. As the trial Court failed to frame such an issue, it became necessary for the petitioner herein/defendant to move the above said interlocutory application for framing of such an issue as an additional issue. The learned trial judge, after hearing both sides, dismissed the application, simply on the ground that there was no remarkable improvement in the progress of the case. The said decision was taken by the trial Court, despite the fact that the trial Court itself made an observation that at any stage of the proceedings, the trial Court could frame additional issue, that too even suo motu. Having made such an observation, it is quite surprising that the trial Court has chosen to come to the conclusion that the prayer for framing additional issue should be negated on the sole ground that there was no progress in the trial of the case.

4. This Court is not in a position to approve the reason assigned by the trial Court for the dismissal of the petition. The respondent also could have very well conceded the prayer, instead of resisting the prayer made by the petitioner, as it was only for framing of an additional issue that became necessary in view of the defence plea taken by the revision petitioner herein, in his written statement. Hence, this Court does have no hesitation in coming to the conclusion that the order of the trial Court cannot stand the scrutiny of this Court and the same deserves to be interfered with and set aside.

5. In the result, the Civil Revision Petition is allowed. The order of the trial Court dated 30.04.2015 made in I.A.No.64 of 2015 is set aside. I.A.No.64 of 2015 shall stand allowed. The trial court shall frame an additional issue regarding the correctness or otherwise of the valuation made in the plaint. No costs. Consequently, the connected Miscellaneous Petition is closed.

17.03.2016

Index : Yes
Internet : Yes
gya

To
The District Munsif,
Arakkonam.

P.R.SHIVAKUMAR, J.

gya

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