

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.11.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.R.P (PD) No.4801 of 2011

&

M.P.No.1 of 2011

P.C.Subramanian

... Petitioner

Vs.

Shanmugathai

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 20.10.2011 and made in I.A.No.204 of 2011 in O.S.No.17 of 2009 on the file of the District Munsif-cum-Judicial Magistrate Court, Ranipet.

For Petitioner : Mr.M.Sriram

For Respondent : Mr.P.Mani

ORDER

This memorandum of civil revision has been directed against the order dated 20.10.2011 and made in the application in I.A.No.204 of 2011 in O.S.No.17 of 2009 on the file of the District Munsif-cum-Judicial Magistrate Court, Ranipet. The revision petitioner herein is the defendant in the suit in O.S.No.17 of 2009, whereas the respondent is the plaintiff.

2.It appears from the records that the suit in O.S.No.17 of 2009 was filed by the respondent herein against the revision petitioner seeking the relief of declaration of title and also for mandatory injunction. That suit was contested by the revision petitioner. It is also revealed from the records that the revision petitioner herein had filed another suit in O.S.No.64 of 2008 as against the respondent herein seeking the relief of declaration of title and permanent injunction. Insofar as this suit is concerned, the process of recording of evidence on the side of the plaintiff as well as the defendant is completed.

3. It is brought to the notice of this Court that the trial proceedings in O.S.No.17 of 2009 has not yet been completed because both the suits were simultaneously tried. Under this circumstance, the respondent had chosen to file an application in I.A.No.204 of 2011 under Section 151 of the Code of Civil Procedure to adopt the evidences, both documentary and oral recorded in the suit in O.S.No.64 of 2008 for the suit in O.S.No.17 of 2009 and for pronouncing common judgment. This petition was resisted by the revision petitioner herein. After hearing both sides, the learned trial Judge had proceeded to allow the petition on 20.10.2011. Having been aggrieved by the impugned order, the revision petitioner, being the defendant in the suit, stand before this Court.

4. Heard Mr.M.Sriram, learned counsel appearing for the revision petitioner and Mr.P.Mani, learned counsel appearing for the respondent.

5. Mr.M.Sriram, learned counsel appearing for the petitioner has submitted, that though this petition was filed by the respondent under Section 151 of the Code of Civil Procedure to adopt the evidences, both oral and documentary which were recorded in the suit in O.S.No.64 of 2008 as the evidences of the suit in O.S.No.17 of 2009, it would be sufficient to permit the respondent to recall PW1 and DW1 who were examined in the suit in O.S.No.64 of 2008 for being cross-examined in the suit in O.S.No.17 of 2009.

6. Mr.P.Mani has also conceded to recall PW1 and DW1, who were examined in O.S.No.64 of 2008. Since both the learned counsels have come to a definite understanding, this Court does not want to go to the facts of the case. Therefore, this Court finds that instead of adopting the oral and documentary evidences which were recorded in the suit in O.S.No.64 of 2008 as the evidences of the suit in O.S.No.17 of 2009, as suggested by Mr.Sriram, it may be better to recall PW1 as well as DW1, who were examined in O.S.No.64 of 2008 for being cross-examined in the suit in O.S.No.17 of 2009.

7. Keeping in view of the above fact, the impugned order of the trial Court is modified to the following effect:

The respondent/plaintiff is permitted to recall PW1 and DW1, who were examined in the suit in O.S.No.64 of 2008 for being cross-examined in the

suit in O.S.No.17 of 2009 as the above said suits were simultaneously tried. Accordingly, the learned trial Judge is directed to issue summons to PW1 and DW1 who were examined in the suit in O.S.No.64 of 2008 for being cross-examined in the suit in O.S.No.17 of 2009 on payment of necessary batta by the respondent/plaintiff and after the completion of cross-examination, the trial Court is directed to dispose of both the suits within a prescribed period of three months from the date of receipt of a copy of this order without further loss of time.

This Civil Revision Petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

22.11.2016

gpa

To

The District Munsif-cum-Judicial Magistrate Court
Ranipet

T.MATHIVANAN.J.,

gpa

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