

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2016

CORAM

The Hon'ble Mr.Justice K.K.Sasidharan

C.R.P.(PD)Nos.1188 to 1190 of 2016

and

C.M.P.No.6523 of 2016

Sampath Kumar

...Petitioner in all C.R.Ps

Vs.

Eswaran

... Respondent in all C.R.Ps

Prayer in C.R.P (PD) No.1188 of 2016

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 14.07.2014, made in I.A.No.297 of 2014, in O.S.No.62 of 2011, on the file of the Sub Court, Perundurai.

Prayer in C.R.P (PD) No.1189 of 2016

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 01.09.2015, made in I.A.No.504 of 2015, in O.S.No.62 of 2011, on the file of the Sub Court, Perundurai.

Prayer in C.R.P (PD) No.1190 of 2016

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 01.09.2015, made in I.A.No.505 of 2015, in O.S.No.62 of 2011, on the file of the Sub Court, Perundurai.

For Petitioner
in all C.R.Ps. : Mr.N.Manokaran
For Respondents : Mr.T.Murugamanickam
in all C.R.Ps.

COMMON O R D E R

The petitioner filed three Interlocutory Applications before the Subordinate Court, Perundurai, in I.A.No.297 of 2014 and I.A.Nos.504 and 505 of 2015.

2. The Application in I.A.No.297 of 2014, was filed to receive additional written statement. The said Application was dismissed by the learned trial Judge on multiple grounds, including delay.

3. The Applications in I.A.No.504 and 505 of 2015, were also dismissed, taking in account the background facts relating to the pendency of the litigation and the time taken by the petitioner earlier to examine the

witnesses. The Orders passed by the learned trial Judge, in the respective Interlocutory Applications are under challenge in these Civil Revision Petitions.

4. The Application in I.A.No.297 of 2014 was filed after the commencement of trial. There is no question of taking up a plea with regard to non-joinder of the necessary parties after the commencement of trial. In case, I.A.No.297 of 2014 is allowed, necessarily, the Suit has to commence from its inception, the newly impleaded parties should be given notice, and thereafter, the trial Court should give time to file written statement.

5. It is not the case of the petitioner that he was not aware of the nature of the Suit, when he filed the written statement originally. It was only after the commencement of trial, the petitioner filed Application in I.A.No.297 of 2014. The learned trial Judge, was, therefore, perfectly correct in dismissing the Application in I.A.No.297 of 2014.

6. The petitioner filed two other Applications, in I.A.No.504 and 505 of 2015, to re-open the evidence and to recall P.W.2 for further examination. The petitioner, in the affidavits filed in support of the Applications in I.A.No.504 and 505 of 2015, contended that, his father was conducting the litigation. Since he was suffering from cancer, instructions were not given to the counsel to cross-examine P.W.2 properly. It was only under such circumstances, the petitioner wanted to re-open the evidence and recall P.W.2 for cross-examination. It is true that the Applications were filed soon after the conclusion of evidence.

7. After hearing the learned counsel for the parties and on a perusal of the Order passed by the learned trial Judge, I am of the view that one more opportunity should be given to the petitioner to cross-examine P.W.2.

8. In the result, the Applications in I.A.No.504 and 505 of 2015 are allowed.

9. The learned trial Judge is directed to issue summons to P.W.2 to appear on a particular date. The petitioner shall cross-examine P.W.2 on the said day. It is made clear that no adjournments shall be granted to the petitioner to cross-examine P.W.2 at any cost. After the closure of evidence of P.W.2, the matter shall be posted for argument. Since it is a time bound order, no adjournments shall be granted, either to the petitioner or to the respondent, at any cost.

10. In the result, the Civil Revision Petition in C.R.P.(PD) No.1188 of 2016 is dismissed. The Civil Revision Petitions in C.R.P.(PD).Nos.1189 and 1190 of 2016 are allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

23.11.2016

sd

Index : Yes/No
Internet ; Yes/No

To

Sub Court, Perundurai.

K.K.Sasidharan,J.,

sd

C.R.P.(PD)Nos.1188 to 1190 of 2016

23.11.2016

<http://www.judis.nic.in>