

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.06.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.1465 of 2016 &  
C.M.P.No.8051 of 2016

Velu

... Petitioner

v.

1.Kuppusamy  
2.Perumal

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 17.02.2015 passed in I.A.No.3/2015 in A.S.No.6/2003 on the file of the Sub Court, Madurantagam.

For Petitioner : Mr.K.Govi Ganesan

O R D E R

Challenging the fair and decreetal order passed in I.A.No.3 of 2015 in A.S.No.6 of 2003 on the file of the Sub Court, Madurantagam, the first defendant in O.S.No.159 of 1997 on the file of District Munsif Court, Madurantagam, has filed the above Civil Revision Petition.

2. The first respondent-plaintiff filed the suit in O.S.No.159 of 1997 for declaration and permanent injunction.

3. After contest, the suit was decreed by the Trial Court.

4. Aggrieved over the same, the second defendant preferred an appeal in A.S.No.6 of 2003 on the file of Sub Court, Madurantagam. During the pendency of the appeal, the plaintiff as well as the second defendant filed applications under Order 41 Rule 27 of CPC for producing additional documents.

5. The Lower Appellate Court allowed both the applications and remitted the matter back to the Trial Court for adducing further evidence to prove the additional documents.

6. Against the order of remand, the plaintiff preferred an appeal in C.M.A.No.1255 of 2014 before this court and this court, by judgment dated 07.09.2006, set aside the the order of remand and directed the Lower Appellate Court itself to go into the entire matter and deal with the same in accordance with law. Thereafter, the second defendant filed an application under Order 18 Rule 17 of CPC to recall D.W.1 for further evidence to prove the additional documents sought to be marked in the proceedings. The application filed by the second defendant was opposed by the plaintiff.

7. The Lower Appellate Court, after taking into consideration the case of both the parties, dismissed the application finding that the present application has been filed after a lapse of 12 years.

8. On a perusal of the judgment passed in C.M.A.No.1255 of 2014, it could be seen that this court had directed the Lower Appellate Court to decide the matter only with the available materials and has not given any liberty to the parties to adduce further evidence. In the absence of any such liberty given to the parties, the present application filed by the first defendant seeking to recall further evidence to prove the documents cannot be entertained. Taking into consideration all these aspects, the Lower Appellate Court has rightly dismissed the application.

9. In view of the above, I do not find any reason to interfere with the order passed by the Lower Appellate Court . The Civil Revision Petition is devoid of merits and is liable to be dismissed. Since the suit is pending from 2013, I direct the Subordinate Judge, Madurantagam to dispose of the appeal in A.S.No.6 of 2003, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order, with the available materials and records.

With these observations, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No

01.06.2016

Rj

To

The Sub Court,  
Madurantagam.

M. DURAISWAMY,J.,

Rj

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