

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.1675 of 2016

&

CrI.M.P.No.8950 of 2016

1. B.Indira
 2. Minor Naveen
 3. Minor Kaviya
- Minors 2 & 3 rep. by their next
friend and Guardian B.Indira

... Petitioners

VS

Gnanamoorthy

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 23.03.2016 made in I.A.No.29 of 2015 in O.S.No.10 of 2007 on the file of the III Additional District Judge, Vellore @ Tirupattur.

For Petitioners : Mr.V.Krishan

For Respondent : No appearance

ORDER

This revision challenges the order of learned III Additional Judge, Vellore, Tirupattur passed in I.A.No.29 of 2015 in O.S.No.10 of 2007 dated 23.03.2016.

2. Heard learned counsel for petitioners. There is no representation for respondent.

3. O.S.No.10 of 2007 was moved by the petitioners/plaintiffs seeking reliefs of partition, accounts and other incidental reliefs. The respondent/fourth defendant had been set exparte in the suit and such order came to be passed at the instance of court accepting substituted service through publication. The respondent had moved I.A.No.49 of 2014 on 04.12.2014 for setting aside the exparte order against him and in view of the endorsement made by learned counsel for petitioners/respondents, the said petition was allowed on payment of cost of Rs.2000/-. By way of order in I.A.No.118 of 2015 dated 06.01.2016, the respondent/fourth defendant was also permitted to file his written statement. It is in such circumstances, the court below, considering it appropriate to afford respondent an opportunity to cross examine witness and that the delay occasioned cannot be a ground to reject his claim since he must be afforded an opportunity to defend his case properly,

allowed the respondent to recall plaintiff witness. The court below has taken note that the respondent had right to take part in the proceedings from the stage reached and as such, no question of denovo trial arose. It has also ordered payment of cost of Rs.1000/- to the petitioners and directed the respondent to take out summons to official witnesses and to meet their expenditure and also to complete the process of trial as early as possible “as already the trial is almost over”. In the circumstances, this Court finds absolutely no error in the order under challenge.

4. The Civil Revision Petition stand dismissed. Since the suit is of the year 2007, this Court would direct learned III Additional Judge, Vellore, Tirupattur, to dispose of O.S.No.10 of 2007 as expeditiously as possible, in any event within a period of five months from the date of receipt of this order. No costs. Consequently, connected miscellaneous petition is also closed.

15.07.2016

Index:yes/no
Internet:yes
vrc

Note : Issue order copy on 21.07.2016.

To
The III Additional Judge,
Vellore, Tirupattur.

C.T.SELVAM, J

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