

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.04.2016

C O R A M :

THE HONOURABLE **MR. JUSTICE D.KRISHNAKUMAR**

C.R.P.(NPD) No.3030 of 2010
and
M.P.No.1 of 2010

Tamizhmani

..Petitioner

/vs/

1.Kanna Kounder

2.Mangini

..Respondents

Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the fair and decretal order in I.A.No.520 of 2010 in I.A.No.1271 of 2008 in O.S.No.439 of 1998, dated 07.07.2010, on the file of the Additional District Munsif, Villupuram.

For Petitioner :Mr.N.Suresh

For Respondents :Mrs.R.Meenal for R2

No appearance for R1

ORDER

This Civil Revision Petition arises against the order passed in I.A.No.520 of 2010 in I.A.No.1271 of 2008 in O.S.No.439 of 1998, dated 07.07.2010, on the file of the Additional District Munsif, Villupuram.

2.The Revision Petitioner filed a Suit in O.S.No.439 of 1998 against the respondents 1 and 2 before the Additional District Munsif Court, Villupuram, seeking for declaration of his title and his right of irrigation in respect of the suit schedule properties and for permanent injunction. On 23.11.2000, the suit was dismissed for default, by the trial Court, as the petitioner failed to appear for trial. On 03.08.2001 the suit was restored to file, on payment of costs. Again the suit was dismissed for non-prosecution, on 19.12.2001. Since there was a delay of 2524 days in filing the Application to restore the suit on file, the petitioner filed an Interlocutory Application in I.A.No.1271 of 2008 before the Additional District Munsif Court, Villupuram to condone the delay. Counter was filed by the respondents, objecting to condone the long delay. While so, the petitioner again filed an Interlocutory Application in I.A.No.520 of 2010, under Order 6, Rule 17 of Code of Civil Procedure, seeking for amendment

of the affidavit in I.A.No.1271 of 2008 in O.S.No.439 of 1998, stating that some of the particulars in the affidavit is not correct and he has signed the affidavit, without reading the contents of the same.

3.Learned counsel for the second respondent submitted that after hearing the arguments of the learned counsel appearing for both the parties, the trial Court, by its order dated 07.07.2010, has dismissed the Application in I.A.No.520 of 2010 in I.A.No.1271 of 2008 in O.S.No.439 of 1998 holding that there is no provision in the law to amend the affidavit, the petitioner does not have any right to seek for amendment of the affidavit and that the Court has no power to allow the amendment of the affidavit and that the pleadings stated in the affidavit to amend the affidavit is not convincing. He further opposed on the ground that the Application in I.A.No.520 of 2010 has been filed, after nearly 15 months from the date of filing of the condonation application.

4.At this stage, learned counsel appearing for the petitioner submitted before this Court that liberty may be given to the petitioner to file an additional better affidavit in I.A.No.1271 of 2008 in O.S.No.439 of 1998 before the learned Additional District Munsif, Villupuram.

5.The learned counsel appearing for the second respondent has no serious objection for granting permission to file an additional affidavit, if it is permissible as per law.

6.In view of the submissions made by the learned counsel appearing for the petitioner and the learned counsel appearing for the second respondent, liberty is given to the revision petitioner, to file a better affidavit in I.A.No.1271 of 2008 in O.S.No.439 of 1998 pending on the file of the learned Additional District Munsif Court, Villupuram.

7.Accordingly, this Civil Revision Petition is disposed of. No order as to costs. Consequently, M.P.No.1 of 2010 is closed.

28.04.2016

Index:Yes/No
Internet:Yes/No
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To
The Additional District Munsif Court,
Villupuram.

D.KRISHNAKUMAR,J.

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