

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2016

CORAM

THE HONOURABLE MS. **JUSTICE R.MALA**

C.R.P. PD.Nos.237 and 238 of 2016
and C.M.P.No.1184 of 2016

1. Sumathi

2. Sathyavathi ... Petitioners/defendants 1 and 2
in both the petitions

Vs

1. Chandraprakash

2. C.D.Dhakshnamoorthy

3. S.Mani

4. R.Manickam

5. K.S.Sivamalai

6. R.P.Jagannathan

7. B.Pathamachand Jain .. Respondents 1 to 7/Plaintiffs

8. Karthikeyan

9. Alli

10. Banumathi

11. Balasubramaniam .. Respondents 8 to 11/Defendants 3 to 6

in both the petitions

Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order of the learned Principal District Munsif, Salem, dated 25.11.2015 made in I.A.Nos.1227 and 1228 of 2015 respectively in O.S.No.665 of 2007.

For Petitioners : Mr.R.Subramanian

For Respondents : Mr.V.Manoharan

COMMON ORDER

Civil Revision Petitions are filed against the fair and decreetal order dated 25.11.2015 made in I.A.Nos.1227 and 1228 of 2015 in O.S.No.665 of 2007 on the file of the Principal District Munsif Court, Salem.

2.The respondents 1 to 7 herein as the plaintiffs filed a suit in O.S.No.665 of 2007 for declaration that the sale deeds dated 15.05.2002, which were executed by one Rajamanickam in favour of Sumathi/first defendant and R.Sathiavathi/second defendant as null

and void and consequentially, for injunction restraining the defendants from alienating or encumbering the suit properties till the disposal of the suit. The first defendant filed a written statement, which is adopted by the second defendant and contesting the suit. The revision petitioners herein are first and second defendants in the suit and they were set exparte. Therefore, they filed an application in I.A.No.374 of 2015 under Order 9 Rule 7 C.P.C. to set aside the exparte order passed against them, which was allowed on 16.04.2015. At that time, the plaintiffs side evidence was closed and they have not cross-examined them. Hence, after commencement of trial, the revision petitioners have come forward with the applications in I.A.Nos.1227 and 1228 of 2015 to reopen the plaintiffs' side evidence and to recall P.Ws.1 to 3 for the purpose of cross-examination. The trial Court, after hearing both sides, dismissed the applications, against which, the present revisions have been preferred by the defendants 1 and 2.

3.Learned counsel for the revision petitioners/defendants 1 and 2 submits that in the main suit prayer itself, the plaintiffs sought for declaration that the sale deeds executed in favour of the first and second defendants as null and void. So the suit is mainly against the revision petitioners. Since exparte order has been passed against the

revision petitioners, they are unable to cross-examine the plaintiffs' side witnesses and subsequently, it was closed. But the trial Court after considering the decisions of the Honourable Apex Court relied upon by the plaintiffs, in which, it was held that speedy justice should be rendered in civil cases, dismissed the applications, which is perverse. Therefore, he prayed for allowing the revisions.

4. Resisting the same, learned counsel for the respondents would submit that though ex parte order has been set aside even on 16.04.2015, the revision petitioners kept quite all along, filed the present applications only on 02.09.2015 after nearly five months. But the defendants 1 and 2/revision petitioners have not assigned any sufficient reason as to why they have not filed those applications in time. He would further submit that if the Court comes to the conclusion that an opportunity must be given to the revision petitioners to cross-examine P.W.1 to P.W.3, the plaintiffs may be permitted to file additional proof affidavit. However, he prayed for dismissal of the revisions.

5. Considered the rival submissions made on both sides and perused the typed set of papers.

6.The respondents 1 to 7 herein as the plaintiffs filed a suit for the above said reliefs. It is an admitted fact that the revision petitioners herein were set exparte and the same was set aside on 16.04.2015. During that period, plaintiffs' side evidence was closed and the defendants' side evidence was in progress. After completion of defendants' side evidence, when the matter was posted for arguments, the present applications were filed on 02.09.2015. It is true, a speedy justice is right of the litigants. In the case on hand, once exparte order against the defendants 1 and 2 were set aside, an opportunity must be given to them to put forth their defence. Since other defendants are sailing with the defendants 1 and 2, they have to cross-examine P.W.1 to P.W.3.

7.Considering the aforestated circumstances of the case, I am of the view, once exparte order has been set aside against the defendants 1 and 2 and they are permitted to file a written statement, it is the duty of the Court to give an opportunity to them to cross-examine the plaintiffs' side witnesses. That factum was not considered by the trial Court. Therefore, the impugned order passed by the trial Court is unsustainable and it is hereby set aside and the application in I.A.No.1227 of 2015 for reopen the case is allowed. Consequently, the defendants 1 and 2 are permitted to recall P.W.1 to P.W.3 for cross-examination and that the application in I.A.No.1228 of 2015 is also

allowed.

8.In fine, Civil Revision Petitions stand allowed. The trial Court is directed to dispose of the suit within a period of two months from the date of receipt of a copy of this order. Both the parties are directed to co-operate with the early disposal of the same. Considering the request made by the learned counsel for the plaintiffs, before cross-examination of P.W.1, the plaintiffs are permitted to file additional proof affidavit, after furnishing copy of the same to the

R.MALA, J

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defendants. No costs. Consequently, connected Miscellaneous Petition is closed.

28.01.2016

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To

The Principal District Munsif Court, Salem.

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