

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **22..12.2016**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD.Nos.3176 and 3177 of 2016

1. S.Selvaraj
2. D.Elizabeth .. Petitioners in both CRPs.

vs

1. M.I.Thomas Sundar
2. K.J.Stella
3. B.Subramanian .. Respondents in both CRPs.

Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 30.06.2016 passed by the learned VIII Assistant Judge, City Civil Court, Madras in I.A.Nos.17358 and 17359 of 2015 in O.S.No.4909 of 2012.

For Petitioners : Mr.A.Amalraj
in both CRPs.

For Respondents : Mr.R.Anbukarasu
1&2 in both CRPs. R3- CRPs.dismissed
vide court order dt.3.11.2016.

COMMON ORDER

The plaintiffs are the revision petitioners. Aggrieved against the order passed by the learned VIII Assistant Judge, City Civil Court, Madras in allowing the petitions filed by the respondents/defendants for re-opening and recalling PW2 for cross examination, these civil revision petitions have been preferred.

2. The brief facts of the case are as follows:

The petitioners/plaintiffs filed the suit for setting aside the sale deed dated 20.10.2005 standing in the name of the first and second defendants as null and void. The proof affidavit of PW2 was filed on 23.07.2015 and documents were marked and it was posted for cross examination. As the defendants were not present for the cross examination, on the fixed date, the evidence of PW2's cross was closed and the matter was posted for arguments. At this stage, the above I.A.Nos.17358 and 17359 of 2015 in O.S.No.4909 of 2012 were filed by the respondents/defendants for recall and reopen the evidence of PW2 for cross examination. The respondents/plaintiffs opposed the applications alleging very many factual reasons including the change of counsels by the respondents/defendants. It is also pointed out that the reasons given by the defendants for re-opening the case are self-contradictory and they are factually incorrect and

have stated false and frivolous reasons, which is an abuse of process of court. However, the Court below had allowed the applications. Aggrieved by the said order, these civil revision petitions have been preferred.

3. Heard both sides.

4. On a perusal of the records, it is seen that PW2 seems to have been examined on 23.07.2015 in chief and Exs.A1 to A19 were marked and it was posted for the cross examination of PW2 by the defendants on 31.07.2015, on which date, the defendants had not appeared and allowed PW2's evidence to be closed. Immediately, the above petitions have been filed by the defendants, which are allowed. No doubt, any applications under Order XVIII Rule 17 of the Code of Civil Procedure cannot be allowed for the sake of asking and the same should be diligently exercised. No prejudice would be caused to the revision petitioners/plaintiffs by allowing the respondents/defendants to cross examine the plaintiffs. It is also seen that PW1's evidence is already eschewed.

5. The only grievance of the revision petitioners/plaintiffs seem to be with the attitude and the conduct of the respondents/defendants

in procrastinating the proceedings and not to allow the suit to come to an end. Without getting into the allegations stated by the revision petitioners/plaintiffs in their counter statement, this Court, in the interest of justice, is inclined to give one final opportunity to the respondents/defendants to cross examine PW2. Accordingly, no interference is warranted in the impugned order passed by the learned VIII Assistant Judge, City Civil Court, Chennai. However, for the hardship caused to the revision petitioners/plaintiffs by the respondents/defendants, for dragging on the proceedings from 2012, from which date, the suit was ripe for trial, the revision petitioners/plaintiffs have to be sufficiently compensated. The respondents/defendants have deliberately allowed the suit to go exparte and got it set aside and even after the exparte decree was set aside, they were not inclined to get along with the case.

6. From the averments made by the revision petitioners/plaintiffs, it is clear that the respondents/defendants also have been exhibiting some kinds of indifference in conducting the case. Therefore, though this Court is inclined to confirm the order passed by the trial court, it is subject to payment of costs to the revision petitioners/plaintiffs.

7. Accordingly, both these Civil Revision Petitions are dismissed and the orders passed by the Court below are confirmed, however, subject to the condition that the respondents/defendants shall pay a sum of Rs.10,000/- [Rupees ten thousand only] to the revision petitioners/plaintiffs, within a period of four weeks from the date of receipt of a copy of this order, failing which, the orders passed by the Court below to recall and re-open the evidence of PW2 for cross examination by the respondents/defendants would not enure to the benefits of the respondents/defendants. No costs.

22.12.2016

vj2

Index: Yes/No

Internet:Yes

To

The VIII Assistant Judge, City Civil Court, Madras

PUSHPA SATHYANARAYANA,J.,

vj2

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