

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 29.11.2016

Pronounced on: 09.12.2016

CORAM:

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

CIVIL REVISION PETITION (PD) NO.311 OF 2013

P.Devaki

...Petitioner

Vs.

1. Mr. E.D.Gajapathy
2. Mrs.D.Gomathi

..Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 17.12.2012 passed in I.A.No.17277 of 2012 in I.a.No.7222 of 2012 in O.S.No.2078 of 2009 on the file of XVI Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr. K.G.Vipra Narayanan

For Respondent : Mr. J.S.Mahalingam for R1
No appearance for R2

ORDER

1. This Civil Revision Petition challenges the decreetal order passed in I.A.No.17277 of 2012 in I.A.No.7222 of 2012 in O.S.No.2078 of 2009 by the XVI Assistant Judge, City Civil Court, Chennai.

2. Original suit in O.S.No.2078 of 2009 was filed by the Plaintiff/Respondent herein seeking declaratory relief as well as mandatory injunction. An application was filed for appointment of Advocate Commissioner by the 1st respondent in the Civil Revision petition/plaintiff in original suit that was ordered by the Assistant Judge, City Civil Court. The Commissioner duly filed an interim and final report before the trial court. Arguments have been completed and the suit is ripe for disposal. The defendants, at that stage, put up a borewell and hand pump and the first respondent herein/plaintiff in original suit thus sought amendment of the plaint in I.A.7222/2012 by substituting relief set out in para 12(b) of the plaint with a prayer for mandatory injunction to remove not only the compound wall but also the bore well and hand pump.

3. Notice appears to have been issued to the revision petitioner and the matter was posted for filing of counter. Adjournments were sought on umpteen occasions (more than ten opportunities were afforded) and the revision petitioner was finally was set exparte on 31.10.2012 and I.A.7222/2012 allowed in favour of the respondent herein. I.A.17277/2012 thus came to be filed by the revision petitioner herein on 15.11.2016 with a prayer to set aside the exparte decree and enclosing the counter to

I.A.7222/2012. The application was dismissed on 17.12.2012 by the XVI Assistant Judge, City Civil Court and the same is challenged herewith by the Civil Revision Petitioner.

4. Heard the submissions of Mr. K.G.Vipra Narayanan, learned Counsel for the Revision Petitioner and Mr. J.S.Mahalingam, Learned Counsel for the 1st respondent.

5. The Assistant Judge notes that after grant of several opportunities for filing of counter between August 2012 and October 2012, the matter was listed 'as last chance and no further adjournments', on 31.10.2012. Even on the said date, there was no representation by the petitioner and the court suo moto passed the matter over for filing of counter. The petitioner was set exparte only thereafter. The learned Judge has noted that the amendment of plaint in the original suit sought by the respondent in this revision petition was not a new relief, but was precipitated in response to various acts of the Defendants. This court finds that the prayer for amendment has been rightly accepted on merits. The Assistant judge has considered the matter in a proper perspective in rejecting I.A.No.17277 of 2012 and no valid grounds have been set out by the revision petitioner before the assistant judge to justify the delay in

filing of counter.

6. In view of the detailed reasons set out in the order of the Assistant Judge, this court is not inclined to interfere with the same and the Civil Revision Petition is dismissed without costs. Consequently, connected M.P.No.1 of 2013 is closed.

09.12.2016

msr

Index:Yes/No

Internet:Yes/No

To

The XVI Assistant Judge, City Civil Court, Chennai.

Dr.ANITA SUMANTH, J.

msr

**PRE DELIVERY ORDER IN
CIVIL REVISION PETITION (PD)
NO.311 OF 2013**

.12.2016

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