



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2016

CORAM :

THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

C.R.P. (PD) Nos. 1103 and 1104 of 2016

and

C.M.P. (MD) No. 5574 of 2016

Karuppan

... Petitioner/Petitioner/Plaintiff
(In both petitions)

Vs.

1. Pappathi
2. Indirani

... Respondents/Respondents/Defendants
(In both petitions)

PRAYER: Civil Revisions are Petition filed under Section 227 of Constitution of India to set aside the Fair and decretal order dated 15.12.2015 passed in I.A.Nos. 710 and 711 of 2015 in O.S.No. 182 of 2013 on the file of the District Munsif Court, Kulithalai.

For Petitioner : Mr. R. Subramanian
in both cases

For Respondents : Mr. G. Sridharan
in both cases

C O M M O N O R D E R

The revisions are directed against the fair and decretal order dated 15.12.2015 passed in I.A.Nos. 710 and 711 of 2015 in O.S.No. 182 of 2013 on the file of the District Munsif Court, Kulithalai.

2. Heard Mr. R. Subramanian, learned counsel appearing for the petitioner and Mr. G. Sridharan, learned counsel appearing for the respondents and perused the materials available on record.

3. The petitioner filed the suit O.S.No. 182 of 2013 against the respondents before the learned District Munsif, Kulithalai for declaration of title and for permanent injunction. The defendants 1 to 4 remained ex-parte and the suit is being contested by the respondents 1 and 2 herein/the defendants 5 and 6. The trial in the suit was commenced and P.W. 1 was examined in chief and he also marked Ex. A1 to A8. Due to non-appearance of P.W. 1 for cross examination, the plaintiff's side evidence was closed on 29.01.2015.

4. Subsequently, the petitioner filed two applications in I.A.No. 710 of 2015 and 711 of 2015 to re-open evidence and to recall P.W. 1 for the purpose of re-examination. The respondents made an endorsement in the application stating that the petitions may be allowed on terms. Based on the endorsement of the respondents, the applications came to be allowed on payment of cost of Rs. 200/- on 24.11.2015. The petitioner filed a memo on 01.12.2015 stating that the conditional order has been complied with. However, on 15.12.2015, the trial court suo motu recalled the order passed on 24.11.2015 and dismissed both the applications.



5. Mr.R.Subramanian, learned counsel for the petitioner would submit that the suit was filed for declaration and consequential injunction and the trial court has no jurisdiction to recall the order passed on 24.11.2015 *suo motu* and if the petitioner is not given an opportunity, it will cause great prejudice to the interest of the petitioner. It is further submitted that the petitioner is ready to give evidence afresh and the applications may be allowed.

6. It is seen from the records that the trial court recalled the order passed on 24.11.2015 on the sole ground that the evidence of P.W.1 was already eschewed.

7. Taking into consideration the submission of the learned counsel for the petitioner and the prayer sought for in the suit, this Court is of the opinion that the petitioner should be afforded one more opportunity to prove his case.

8. In such view of the matter, the orders impugned in the revisions are set aside permitting the petitioner to give evidence afresh and the trial court shall decide the suit on merits and in accordance with law as expeditiously as possible.

9. Accordingly, this Civil Revision Petitions are allowed. No costs. Consequently, connected C.M.P.(MD) No.5574 of 2016 is closed.

Sd/
Assistant Registrar(CS-II)

/TRUE COPY/

Sub Assistant Registrar

To
The District Munsif,
Kulithalai.

+1cc to M/S.G.Sridharan, Advocate in SR.No.39313
+1cc to M/S.R.Subramanian, Advocate in SR.No.39366

C.R.P. (PD) Nos.1103 and 1104 of 2016
and C.M.P. (MD) No.5574 of 2016
25.07.2016

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