



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 10.06.2016

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P. (MD) No.1115 of 2016

and

C.M.P. (MD) No.5597 of 2016

Sornappan

.. Petitioner/Petitioner/1st Defendant

vs.

1. Mrs.Jeyajothi Nayagam,
W/o.Jothi Nayagam,
Puthoor, Thovalai,
Thovalai Taluk,
Kanyakumari District,
Rep. By Power Holder,
Mrs.Leela Paul Raj,
W/o. Paul Raj,
Raja Leela Cottage,
Thovalai,
Thovalai Taluk,
Kanyakumari District.

.. Respondent/Respondent/Plaintiff

Prayer: Petition filed under Article 227 of the Constitution of India against the order and decreetal order, dated 15.04.2016 made in I.A.No.27 of 2016 in O.S.No.110 of 2012 on the file of the District Munsif cum Judicial Magistrate Court, Boothapandi.

For Petitioner : Mr.C.Godwin

ORDER

The defendant, in O.S.No.110 of 2012 on the file of the District Munsif cum Judicial Magistrate Court, Boothapandi, is the petitioner in this revision.

2. The respondent originally filed a suit in O.S.No.684 of 2009 before the Principal District Munsif Court, Nagercoil against the petitioner for permanent injunction. Subsequently, the suit was transferred to the District Munsif cum Judicial Magistrate Court, Boothapandi and renumbered as O.S.No.110 of 2012. In the suit, the petitioner/first defendant filed an application in O.S.No.27 of 2016 to implead five other persons as defendants 2 to 6. The said application was dismissed. Aggrieved over the order, the present revision is filed.



3. Mr.C.Godwin, learned counsel appearing for the petitioner would submit that in the affidavit, the petitioner has specifically stated that the proposed parties are having every right over the pathway, which was not denied by the respondent in the counter. It is further submitted that the earlier application filed by the proposed parties to implead themselves as defendants 2 to 6 were dismissed for non-prosecution and therefore, that cannot be put against the petitioner in this case. It is further submitted that once the respondent has not denied the claim of the petitioner, it would amount to admission.

4. The learned counsel for the petitioner relied upon the Judgment of this Court in Kamalam Vs. Rukmani and others reported in (2010) 1 MLJ 913. In that case, the defendant has not specifically denied the averments made by the plaintiff in the suit. In that context, this Court has held that the fact in question is deemed to have been admitted by the defendant. So, in my considered view, the decision has no bearing on the facts of this case.

5. It is seen that the suit was filed in the year 2009. The petitioner having kept quiet for more than 7 years, filed this application when the suit was posted for evidence of the defendant. The trial Court has rightly dismissed the application. I do not find any reason to interfere with the order passed by the trial Court. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS)

To

The District Munsif cum Judicial Magistrate, Boothapandi.

JM/GSV-PM/SAR-II/20.06.2016/2P-2C

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