



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 27.06.2016

CORAM

THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

C.R.P. (MD) No. 1233 of 2016

and

C.M.P. (MD) No. 5992 of 2016

Murugesan

.. Petitioner/Petitioner/Defendant

vs.

Nayeena Mohamed

.. Respondent/Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the fair and decreetal order passed by the District Munsif Court, Aruppukottai in I.A.No.542 of 2010 in O.S.No.282 of 2008, dated 10.12.2011 and set aside the same by allowing the revision.

For Petitioner : Mr.G.Mariappan

ORDER

This revision arises out of the order passed by the District Munsif Court, Aruppukottai in I.A.No.542 of 2010 in O.S.No.282 of 2008, dated 10.12.2011.

2. The petitioner is the defendant in the suit in O.S.No.282 of 2010. The respondent filed the suit against the petitioner for permanent injunction and in the suit, an application in I.A.No.542 of 2010 was filed by the petitioner for appointment of an Advocate Commissioner under Order 26 Rule 9 and Section 151 of C.P.C.

3. The trial Court appointed an Advocate Commissioner by an order, dated 08.12.2011 and the order was re-called on 10.12.2011 on the ground that in an injunction suit, an Advocate Commissioner cannot be appointed to collect evidence of the parties relying upon the order passed by this Court in **Chinnathambi and others Vs. Anjalai** reported in **2006 (5) CTC 494**.

4. Mr.G.Mariappan, learned counsel for the petitioner, would submit that the trial Court appointed an Advocate Commissioner by an order, dated 08.12.2011 and thereafter, the trial Court has no power to recall the order in view of Sections 114 and 152 of C.P.C and Order 47 Rule 1 of C.P.C.



5. It is seen from the records that the impugned order came to be passed on 03.08.2011 and the order copy was made ready on 29.08.2011, however, the petitioner chose to file the present revision on 22.06.2016 ie., after lapse of about five years.

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6. It is curious to note that absolutely no explanation was offered for the delay. It is true that there is no limitation prescribed for the revision to be filed under Article 227 of the Constitution of India and at the same time, the parties cannot be permitted to file a case of their choice. In the result, this Civil Revision Petition is dismissed on the sole ground of laches. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

The District Munsif, Aruppukottai.

+1 cc to M/S.G.Mariappan, Advocate in SR.No.33164

ps

CSL/ARK-PV/02.08.2016 :2p/3c

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