



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 19.09.2016

CORAM

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P (MD) No. 1845 of 2016
and C.M.P (MD) No. 8881 of 2016

Gomathi Nayagam .. Petitioner/Petitioner/Plaintiff

vs.

Subbulakshmi .. Respondent/Respondent/Defendant

(Cause-title accepted vide
order, dated 30.08.2016 made
in C.M.P (MD) No. 8057 of 2016)

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.1591 of 2014 in O.S.No.41 of 2010 on the file of the Principal District Munsif Court, Tirunelveli, dated 05.04.2016.

For Petitioner : Mr.T.Selvan

ORDER

This Civil Revision Petition arises out of the order, dated 05.04.2016 passed in I.A.No.1591 of 2014 in O.S.No.41 of 2010 by the learned Principal District Munsif, Tirunelveli.

2.The petitioner has filed a suit in O.S.No.41 of 2010 before the Principal District Munsif Court, Tirunelveli, for declaration and permanent injunction, against the respondent herein. The respondent/defendant has filed the written statement on 09.06.2010. Thereafter, the present application in I.A.No.1591 of 2014 in O.S.No.41 of 2010 has been filed by the revision petitioner/plaintiff before the trial Court to condone the delay in filing the reply statement. The respondent/defendant has filed a counter-affidavit in the said application and the trial Court has dismissed the application in I.A.No.1591 of 2014. Aggrieved by the same, the revision petitioner has preferred the present Civil Revision Petition before this Court.

3.Heard Mr.T.Selvan, learned counsel appearing for the petitioner.



4. According to the petitioner, the petitioner has filed a suit in O.S.No.41 of 2010 before the trial Court for declaration and permanent injunction and he has filed an application in I.A.No. 1591 of 2014 before the trial Court to condone the delay in receiving the reply statement. In the affidavit, it has been specifically contended that the suit property does not belong to the Government. The said property belongs to a private party. Therefore, he wants to file the present application to deny the statement made by the respondent/defendant. Hence, opportunity shall be given to the revision petitioner to put forth the case before the trial Court by accepting his reply statement.

5. The learned counsel for the respondent before the trial Court in the aforesaid application stated that the written statement was filed on 09.06.2010 and thereafter, it was posted for trial on 22.11.2012 on the request of the petitioner and the said suit has been protracted now and then and finally, the suit was dismissed. Thereafter, an application has been filed to restore the suit in I.A.No.298 of 2013 before the Court below and the same was allowed. After restoration of the dismissal order, the case was posted for trial on 03.10.2013. P.Ws.1 to 4 were examined by the trial Court. After the plaintiff's side evidence was over, defendant's side evidence was examined and posted for cross-examination. At this stage, the present application was filed by the revision petitioner only to protract the suit pending before the trial Court.

6. On the basis of that, the trial Court also observed that P.W.1 was examined on 22.10.2013, P.W.2 was examined on 27.02.2014, P.W.3 was examined on 11.04.2014 and P.W.4 was examined on 19.08.2014. After completing the evidence of plaintiff's witness, D.W.1 was examined on 09.09.2014 and subsequently, on 13.10.2014, posted for cross-examination of D.W.1. Therefore, the said application was dismissed by the Court below. According to the learned counsel for the petitioner that even if the Civil Revision Petition is allowed and the said application is restored, there will not any change in basic character and the said application is filed only for filing a reply statement before the trial Court. The said submission made by the learned counsel for the petitioner could not be accepted for the reason that the present application filed by the revision petitioner is a belated one and he has not taken any steps to file the said application before the trial Court at an early stage.

7. Considering the facts and circumstances of the case, I am of the view that after the evidence of plaintiff is over and the evidence of D.W.1 is commenced, at this stage, the present application filed by the petitioner, has rightly been dismissed by the trial Court. Therefore, this Court does not warrant any interference in the order of the trial Court and accordingly, the



Civil Revision Petition is dismissed. The trial Court is also directed to decide the suit, without being influenced by any of the observations made in this order. No costs. Consequently, connected Miscellaneous Petition is also closed.

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Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To
The Principal District Munsif,
Tirunelveli.

+1 cc to MR.T.SELVAM, Advocate SR.No.53527

**C.R.P (MD) No.1845 of 2016
and
C.M.P (MD) No.8881 of 2016
19.09.2016**

SMA/SS-2/16.11.2016:3P/3C