



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP(MD) No. 2556 of 2016 and
C.M.P(MD) No. 12043 of 2016

Mokkai Ilangan : Petitioner/ Petitioner/Defendant

Vs.

Ammasi : Respondent/ Respondent/Plaintiff

Prayer: This Civil Revision Petition is filed under Article 226 of the Constitution of India praying to set aside the order and decreetal order dated 18.10.2016 made in I.A.No.217 of 2016 in O.S.No.78 of 2010 on the file of the District Munsif Court, Melur.

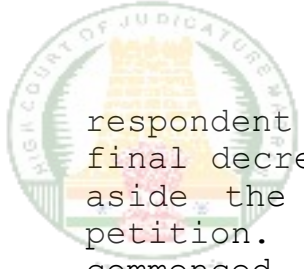
For Petitioner : Mr. A. Saravanan

O R D E R

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 18.10.2016 made in I.A.No.217 of 2016 in O.S.No.78 of 2010 on the file of the District Munsif Court, Melur.

2. The petitioner is the defendant in O.S.No.78 of 2010 on the file of the District Munsif Court, Melur. The respondent who is the plaintiff filed suit for partition. The petitioner filed written statement on 18.10.2010. Trial commenced and PW.1 was examined as chief and posted for cross examination. At that stage, the petitioner filed I.A.No.217 of 2016 for getting permission to file additional written statement. According to the petitioner, he read the written statement and came to know that some important points informed him to his Advocate was not included in the written statement. Unless these points are included by way of additional written statement, the petitioner will be put to irreparable loss and hardship.

3. The respondent / plaintiff filed counter affidavit and objected the above said submission. The respondent submitted that after chief examination of PW.1 it was posted for cross examination. The petitioner had admitted that he signed in the written statement after the same read over to him. After Chief Examination of PW.1 and when it is posted for cross examination, the petitioner has come out with the present petition only to drag on the proceedings. On 26.04.2011 an exparte preliminary decree was passed. The



respondent filed final decree application. When the application for final decree was pending, the petitioner filed an application to set aside the ex parte preliminary decree along with condone delay petition. The said petition was ordered. When the trial was commenced, the petitioner has filed this petition only to drag on the proceedings and also stated that petitioner has not given sufficient and valid reasons for filing additional written statement.

4. The learned District Munsif, Melur, considering the averments mentioned in the affidavit and counter affidavit and also the materials available on record, by an order dated 18.10.2016, dismissed the application holding that the petitioner filed written statement on 18.10.2010 and after six years, he filed petition, for permission to file additional written statement. As per Order VIII Rule 1 of CPC, defendant has to file written statement within 30 days or within extended time granted by Court not exceeding 90 days. Petitioner also admitted that written statement was read over and then only he signed the written statement.

5. Against the said order, present Civil Revision Petition has been filed.

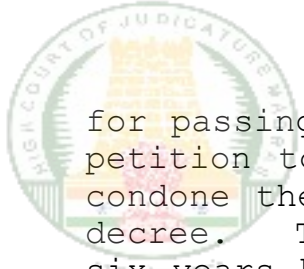
6. The learned counsel appearing for the petitioner submitted that learned Judge failed to consider the reason given by the petitioner for filing additional written statement. Trial is only at the stage of cross examination of PW.1. Therefore, respondent will not be prejudiced by permitting the petitioner to file additional written statement.

7. The learned counsel appearing for the petitioner relied on the following judgments and submitted that claim of the petitioner for filing additional written statement cannot be denied on the ground of delay alone.

- (i) 2004-4 L.W. 699 (Shanmugam Vs. Vijayarangam and others)
- (ii) 2016-i L.W 862 (Subbaiah and another Vs. Velue @ Velappan)
- (iii) 2016-3-LW 302 (Devendran and another vs. P.V. Palani)
- (iv) The Judgment of this Court dated 15.09.2006 in CRP(PD). No.996 of 2005 (Thiyagarajan vs. Manivannan).

8. I have heard the learned counsel appearing for the petitioner and perused the materials available on record.

9. From the materials available on record, it is seen that the petitioner filed written statement on 18.10.2010. After six years of filing written statement, he filed petition for permission to file additional written statement after commencement of trial. On earlier occasion after filing written statement, he did not contest the suit. Therefore, an ex parte decree was passed on 26.04.2011. Immediately, he did not file any petition to set aside the ex parte preliminary decree. The respondent filed a petition



for passing of final decree and at this stage, the petitioner filed petition to set aside the ex parte decree along with petition to condone the delay in filing the petition to set aside the ex parte decree. The ex parte preliminary decree was set aside. Now, after six years he filed petition for filing additional written statement after commencement of trial. The reason given by the petitioner for filing additional written statement at this belated stage is not valid. In the circumstance, the judgments relied on by the counsel for the petitioner is not applicable to the facts of the present case. The learned District Munsif, Melur has dismissed I.A.No.217 of 2016 in O.S.No. 78 of 2010 by giving valid and cogent reasons. There is no illegality or irregularity in the order passed by the Court below warranting interference by this Court.

10. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (WRITS)

/True Copy/

Sub Assistant Registrar

To

District Munsif Court, Melur.

+1cc to M/s.A.SARAVANAN Advocate in SR. NO.81286

TRP

JS/JM/05.02.2017/3P-3C

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