



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP (NPD) (MD) .No.291 of 2016 and
CMP (MD) .No.1151 of 2016

Kaliammal
rep. By her Power Agent
Mathiyazhagan : Petitioner
Vs.

1. Muthayee
2. Sivakami : Respondents

Civil Revision Petition is filed under Article 227 of the constitution of India against the fair order and decreetal order in I.A.No.562 of 2015 in O.S.No.153 of 2005 on the file of District Munsif Court, Aranthangi, dated 12.10.2015.

For Petitioner : Mr. N. Balakrishnan

O R D E R

This Civil Revision Petition is filed against the fair and decreetal order passed in I.A.No.562 of 2015 in O.S.No.153 of 2005, on the file of the District Munsif Court, Aranthangi, dated 12.10.2015.

2. The revision petitioner is the plaintiff. She has filed a suit in O.S.No.153 of 2005, on the file of the District Munsif Court, Aranthangi, for declaration and recovery of possession. The petitioner filed an Application in I.A.No.562 of 2015 in O.S.No.153 of 2005, to re-open the case for the purpose of filing an application for appointment of an Advocate Commissioner to measure the land with the help of Village Administrative Officer and Taluk Surveyor. The respondents / defendants resisted the same on the ground that the application has been filed belatedly and only with a view to drag on the proceedings.

3. The learned Trial Judge, after considering all the materials available on record and arguments of the learned counsel for the parties, dismissed the application holding that the application has been filed belatedly i.e after 10 years of filing on the side of the defendants. Against the said order, the petitioner has filed the present revision.



4. The learned counsel appearing for the petitioner submitted that the learned Trial Judge erred in dismissing the application on the sole ground of delay. This Court, even at the time of appellate stage, allowed the application for re-opening and for filing application for appointment of Advocate Commissioner. The measurement of property is necessary in order to avoid multiplicity of proceedings and to avoid difficulty in executing the decree which may be passed in favour of the petitioner. The petitioner should not be penalized for the delay, on the part of his counsel. Therefore, he prayed for allowing the revision.

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

6. The petitioner has filed the Interlocutory Application for re-opening the case to enable him to file an application for appointment of Advocate Commissioner to measure the property. From the materials it is seen that the Interlocutory Application is filed when the suit is posted for arguments on behalf of the respondents / defendants and after 10 years of the filing of suit. Further, the suit is for declaration and recovery of possession and it is for the plaintiff to prove the same by documentary and oral evidence. The learned Trial Judge has considered all the materials available on record and arguments and passed an order in proper perspective and given valid reason. There is no reason warranting interference by this court.

7. In view of the above, the Civil revision petition is dismissed confirming the impugned order of the learned District Munsif, Aranthangi passed in I.A.No.562 of 2015 in O.S.No.153 of 2005, dated 12.10.2015. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

trp

To

The District Munsif , Aranthangi,

CSL/GSV-AN/18.02.2016/2p/2c

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