



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.294 of 2016 (PD)
and
C.M.P. (MD) .No.1290 of 2016

Aandi

.. Revision Petitioner/Petitioner/
Plaintiff

Vs.

1.Veeraiah
2.Chinna Veeraiah
3.Sekar
4.Karuppaiah

.. Respondents/Respondents/Defendants

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order 14.07.2015, made in I.A.No.371 of 2013 in O.S.No.19 of 2013 on the file of the learned District Munsif Court of Vadipatti.

For Petitioners : Mr.O.Sivakumar

ORDER

This Civil Revision Petition is filed against the fair and decretal order 14.07.2015, made in I.A.No.371 of 2013 in O.S.No.19 of 2013 on the file of the learned District Munsif Court of Vadipatti.

2. The respondents were set ex-parte in the application. Therefore notice to the respondents is dispensed with.

3. The petitioner filed a suit in O.S.No.19 of 2013 for declaration that he is the owner of Item Nos.2 to 4 of the Suit properties and injunction and recovery of possession and for partition of Item Nos. 5 and 6 in three equal shares and allot 2/3rd share to the petitioner herein. The first respondent/defendant appeared and filed written statement. At the time of trial, the petitioner filed proof affidavit and marked documents. The respondent/defendant did not cross-examine the petitioner. Therefore they were set ex-parte and ex-parte decree was passed on 21.02.2007. The respondents /defendants filed an application to set aside the ex-parte decree and the same was allowed on 11.12.2007 and posted for cross-examination of petitioner on 04.01.2008. The petitioner did not appear on that day. Therefore the Suit was dismissed on that date. An application was filed by the petitioner to restore the Suit and that application was allowed and the Suit was restored to file on 05.06.2012.

4. On 25.07.2013, the petitioner filed an application in I.A.No.371 of 2013 for recalling PW1 and to file additional proof affidavit. The respondents 1,3 and 4 entered appearance through advocate. They did not



appear at the time of hearing. The second respondent did not appear either in person or through counsel. Therefore all the respondents were set ex-parte.

5. The learned Judge considering the materials on record, dismissed the application on the ground of delay and that contention of petitioner that his previous counsel failed to include important facts as he was on bed-ridden is not acceptable and he has not filed additional proof affidavit along with the application. Against that order the petitioner has come up with this Civil Revision Petition.

6. The learned counsel for the petitioner contended that the learned Judge has failed to appreciate Order 18 Rule 17 C.P.C. in proper perspective. The learned Judge has not properly considered the contention of the petitioner in the application for recalling. The learned Judge failed to see that there is no delay in filing the application to recall and file additional proof affidavit. Therefore prayed for allowing this Civil Revision Petition.

7. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

8. From the impugned order, it is seen that the petitioner has filed an application for recalling witness under Order 18 Rule 17 of Civil Procedure Code. The said Rule reads as follows:

"17. Court may recall and examine witness

The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit."

9. A reading of this Rule clearly reveals that, Court has power to recall any witness at any stage of the Suit. In the present case, the petitioner has filed an application for recalling PW1, before he is cross-examined by the respondents/defendants. In the circumstances, it cannot be said that the said application is filed after considerable delay. The other reasons given by the learned Judge is not valid. The learned Judge failed to exercise the power conferred on him in proper perspective.

10. In the result, the impugned order is set aside. The application in I.A.No.371 of 2013 is allowed. The learned District Munsif, Vadipatti is directed to recall PW1 and permit him to file additional proof affidavit and hear the matter on merits in accordance with law.

11. With the above direction, this Civil Revision Petition is **allowed**. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO Dept)



To

The District Munsif, Vadipatti.

+ 1 CC TO MR.O.SIVAKUMAR, ADVOCATE IN SR NO. 10876

PJL

TE/JGB-DP/ : 22/03/2016 : 3P/3C

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