

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 09.02.2016****CORAM:****THE HONOURABLE MS.JUSTICE V.M.VELUMANI****C.R.P(MD)No.325 & 326 of 2016 (NPD)****and****C.M.P(MD) .No.1400 of 2016****in CRP. (MD) .No.326 of 2016**

Manimala Devi .. Petitioner/ Petitioner/ Petitioner
/Claimant/ in both petitions
Vs.
1.Balu ..1st Respondent/ Respondent/ Respondent/
/petitioner/petitioner/Plaintiff
2.Arumugam
3.Manimaran
4.Manivannan .. Respondents 2 to 4/ Respondents 1 to3

Prayer in CRP(MD) .No.325 of 2016: This Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, against the fair and decretal order dated 05.01.2016 and made in E.A.No.6 of 2016 in E.A.No.503/2009 in E.A.No.422/2008 in E.P.No.75 of 2005 in O.S.No.586 of 1999 on the file of the learned III-Additional Sub Judge, Madurai.

Prayer in CRP(MD) .No.326 of 2016: This Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, against the fair and decretal order dated 05.01.2016 and made in E.A.No.503/2009 in E.A.No.422/2008 in E.P.No.75 of 2005 in O.S.No.586 of 1999 on the file of the learned III-Additional Sub Judge, Madurai.

For Petitioner : Mr.A.Balamurugan
in both petitions

COMMON ORDER

The first respondent is the plaintiff, the respondents 2 to 4 are the defendants and the petitioner is the third party in the suit in O.S.No.586 of 1999. The second respondent is the father of the petitioner and the respondents 3 and 4 are the brothers of the petitioner. The first respondent has filed the suit in O.S.No.586 of 1999 for specific performance against the respondents 2 to 4. That suit was decreed on 13.03.2004 in favour of the first respondent/plaintiff. After the suit was decreed, the first respondent/plaintiff has filed an execution petition in E.P.No.75 of 2005 for execution of decree. The petitioner/third party has filed E.A.No.503 of 2009 claiming, a share in the property, on the ground that the suit property is an ancestral property and she has a share in that property along with the respondents 2 to 4. The said interlocutory application was adjourned on number of occasions and was posted for enquiry on 05.01.2016. The



petitioner/third party has filed an application in E.A.No.6 of 2016 for adjournment.

2. The learned Judge considering all the materials and facts that number of occasions, at the request of the petitioner, E.A.503 of 2009 was adjourned and finally it was posted for evidence and stated that no further adjournments will be given on that day. On that day, the petitioner did not appear and filed an application in E.A.No.6 of 2016 for adjournment. The learned Judge has dismissed both the interlocutory applications filed by the petitioner viz., claim petition E.A.503 of 2009 and adjournment petition E.A.No.6 of 2016 stating the petitioner has not given any valid reasons. Against that order the petitioner/third party has come up with these Civil Revision Petitions.

3. The learned counsel for the petitioner contended that the learned Judge failed to see that the claim petition in E.A.No.503 of 2009 has to be tried as a suit and the learned Judge should have given an opportunity to the petitioner to put forth her case on merits. The petitioner's marriage was arranged and fixed on 27.01.2016 and therefore she has given valid reason for adjournment.

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

5. From the materials on record, it is seen that E.A.No.503 of 2009 is the claim petition of the year 2009 filed in E.P.No.75 of 2005 to execute the decree dated 13.10.2004. In the application in E.A.No.503 of 2009, the petitioner has taken a number of adjournments and finally it was posted on 05.01.2016 for recording evidence of the petitioner/third party. But the petitioner filed an application in E.A.No.6 of 2016 for adjournment for recording the evidence and on the date the petitioner did not let in any evidence. The first respondent/plaintiff obtained decree in the year 2004 and filed the execution petition in the year 2005. In the circumstances, the learned Judge properly considered all the materials and dismissed both the claim petition and the petition for adjournment by giving valid reasons. The learned Judge exercised his jurisdiction properly and there is no irregularity in the said order warranting interference by this Court.

6. In the result, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar

/True Copy/



To தமிழ்நாடு உயர் நீதிமன்றம்

The III-Additional Subordinate Judge, Madurai.

CN/JGB-DP/23.03.2016/3P-2C

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C.M.P (MD) .No.1400 of 2016
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