



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.480 of 2016 (PD)
and
C.M.P (MD) .No.2071 of 2016

Gurusamy

... Petitioner

Vs.

Ramasamy

... Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 08.10.2010 made in I.A.No.394 of 2015 in O.S.No.146 of 2010, on the file of the District Munsif Court, Virudhunagar.

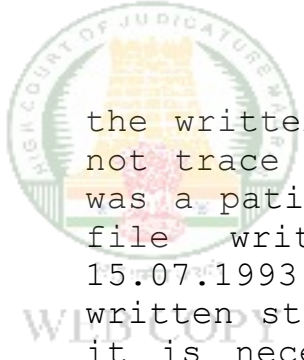
For Petitioner : Mr.S.Vellaichamy

O R D E R

This Civil Revision Petition is filed against the fair and decretal order dated 08.10.2010 made in I.A.No.394 of 2015 in O.S.No.146 of 2010, on the file of the District Munsif Court, Virudhunagar.

2. The petitioner is the defendant. The respondent is the plaintiff. The respondent filed a Suit in O.S.No.146 of 2010 for declaration that suit ABCD portion belongs to him and for recovery of possession, and for mandatory injunction to remove the construction put up in AB wall and for a direction to remove the wall put up by the petitioner. The respondent stated that the petitioner encroached the respondent's property and put up construction in the northern wall.

3. The petitioner has filed I.A.No.394 of 2015 for reception of additional written statement. According to the petitioner, the wall on the south of his property is a common wall and he had put up construction only in his portion of suit property. The description of the property without giving any measurement is vague and proper parties have not been included. The petitioner stayed that agreement, dated 15.07.1993 entered between petitioner and respondent was omitted to be mentioned in



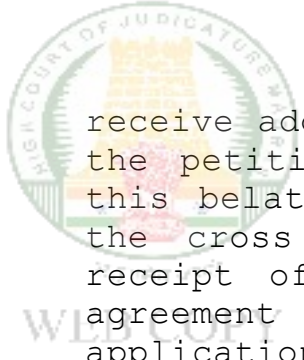
the written statement, filed by him earlier. The petitioner could not trace out the said agreement dated 15.07.1993. The petitioner was a patient inflicted with paralysis and therefore he could not file written statement incorporating the agreement dated 15.07.1993. Due to that, it was not pleaded in the original written statement. Subsequently, it was traced out and therefore, it is necessary to file additional written statement about the execution of the agreement dated 15.07.1993.

4. The respondent filed counter denying the execution of agreement dated 15.07.1993 and stated that it is a forged document. The petitioner already filed application in I.A.No.160 of 2015 to receive additional documents. The said application was dismissed. The petitioner did not file any revision against the said order. The petitioner filed written statement before five years. After framing issues, trial commenced and the respondent side evidence was closed. On behalf of the petitioner, three witnesses were examined as DW1, DW2 and DW3. Then the Suit was posted for further evidence on behalf of the defendants. At that time, the petitioner did not mention anything about the document dated 15.07.1993. In the Suit, the Advocate Commissioner was appointed and he inspected the property and filed his report. The petitioner did not produce the documents even before the Advocate Commissioner. Now, after the cross examination of all the witnesses and after five years of filing of written statement, the petitioner has come up with this petition to receive the additional written statement and therefore, prayed for dismissal of application filed by the petitioner. The learned Judge considering the facts and materials on record, dismissed the application. Against the said order of dismissal, the petitioner has come up with the present Civil Revision Petition.

5. The learned counsel for the petitioner contended that the learned Judge erred in dismissing the application filed under Order 8 Rule 9 CPC without assigning any reasons. The learned Judge has not properly considered the scope and effect of Order 8 Rule 9 C.P.C. The learned Judge ought to have seen that the petitioner was inflicted with paralysis and application should have been considered favourably and also the filing of the additional written statement was absolutely necessary for proper adjudication of rights of the parties.

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

7. From the records, it is seen that the respondent filed Suit in O.S.No.146 of 2010 and trial commenced and evidence on behalf of the respondents were closed. The petitioner examined ~~the respondent~~ and it was posted for further evidence of the petitioner from 10.03.2015 to 28.07.2015. At that stage, the petitioner has come up with the present petition praying to



receive additional written statement. The permission sought for by the petitioner, seeking to file additional written statement at this belated stage, can not be accepted. It is seen that during the cross examination of DW2, he has filed application for receipt of additional documents and tried to mark the alleged agreement dated 15.07.1993 and which was objected and the said application was dismissed. At this juncture, filing Application to receive the additional written statement has no merits. The learned Judge has considered all these facts and dismissed the petition. There is no illegality or irregularity warranting interference in the said order by this Court. Hence, this Civil Revision Petition is liable to be dismissed.

8. Accordingly, this Civil Revision Petition is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To
The District Munsif, Virudhunagar .

PJL
CSL/PEK/SAR-I/02.06.2016 :3P/2C

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