

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2017

CORAM :

THE HONOURABLE MR. JUSTICE M. GOVINDARAJ

C.R.P.(PD).No.1473 of 2017
and
C.M.P.No.6847 of 2017

Madhanlal

...Petitioner

Vs.

Murugesan

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final orders dated 03.10.2016 passed in I.A.No.917 of 2016 in O.S.No.1211 of 2010 on the file of the learned Principal District Munsif Court, Salem.

For Petitioner : Mr.R.Nalliyappan

For Respondent : Mr.A.Kandasami

ORDER

The petitioner has preferred the Civil Revision Petition against the order of the learned Principal District Munsif Court, Salem, rejecting the request

made for reopening this suit for letting evidence.

2. The petitioner had initially filed I.A.No.1356 of 2012 in I.A.No.1816 of 2010 to scrap the report filed by the Advocate Commissioner under Order XXVI Rule 33 of 12 of CPC. The said application was dismissed by the Trial Court, against which, the petitioner preferred a Civil revision Petition before this Court in CRP.No.4257 of 2003 and the said CRP was allowed on 28.03.2016. It is seen from the records that on the date when the said CRP was allowed i.e., on 28.03.2016 the petitioner has filed a petition before the Lower Court to reopen the suit for letting in evidence.

3. The respondent has filed a counter opposing such prayer. The Trial Court on consideration of the materials, held that the respondent/plaintiff has completed his evidence on 01.09.2014. Thereafter, the petitioner has repeatedly taken adjournment under the one pretext or the other. Therefore, the evidence on his side was closed on 04.08.2015 and the matter was posted for arguments of both sides. Thereafter, the petitioner filed I.A.No.142 of 2015 and the said petition was allowed and the petitioner was permitted to lead evidence on 27.04.2016. However without letting evidence, the petitioner took adjournments many times. Therefore, the Trial Court closed his evidence and again posted the matter for arguments. However, the petitioner was given one more opportunity

and the matter was posted on 13.06.2016 and it was after, adjourned to 24.06.2016 and 01.08.2016. At that stage on 23.08.2016, the petitioner prayed to reopen his side of evidence. The Trial Court held that since the petitioner has been granted several opportunities to lead evidence and he has failed to utilize, the same, petitioner's evidence was closed.

4. Consequently, the Trial Court has dismissed the petition and the said order is impugned in this revision.

5. When the matter was taken up for arguments the learned counsel for the petitioner would submit that this Court in CRP.No.4257 of 2013 has directed the Lower Court to issue fresh Commission for inspection of property. On the same day, the petitioner has filed an application before the Lower Court to reopen the suit and allow him to let in evidence. As per the direction of this Court, the Trial Court has appointed a new Advocate Commissioner and the said Advocate Commissioner has also submitted his report before the Trial Court. However the Trial Court was pleased to dismiss the petition filed by the petitioner to reopen his side for letting in evidence.

6. According to the learned counsel, if the petitioner is denied of an opportunity to lead evidence, he will not be in a position to prove the falsity of

the claim made by the respondent/defendant.

7. The learned counsel for the respondent, on the other hand would submit that the suit is of the year 2010 and 7 years have passed by. The suit is still in the stage of arguments. The respondent/defendant is yet to see the light. The learned counsel for the respondent would vehemently oppose the permission to allow the petitioner to reopen his side, since the petitioner has deliberately chosen not to appear before the Trial Court and give his evidence. The petitioner has repeatedly taken adjournment under one pretext on the other, and he has successfully dragged on the proceedings for 7 long years. The learned counsel prayed to sustain the order passed by the Trial Court.

8. I have heard the arguments of both sides.

9. The respondent/Plaintiff has filed the suit for permanent injunction against the petitioner and restraining him from in any way putting up wall on the East-West on the South of S.No.194/1 and in S.No.196; grant mandatory injunction directing the respondent to remove the wall put up by him on the West of the S.No.193/3 and the wall running South-North in S.No.193/3 on the Western side.

10. To decide the above issue, certainly, the evidence of the petitioner

is very much essential. Unless the petitioner gets into the box and deposes, the respondent will not be able to effectively adjudicate the proceedings. Therefore, it is important to give an opportunity to the petitioner to reopen his side and give evidence. The learned counsel for the petitioner, has relied upon the decision of this Court in Mrs. Arumaiammal Vs. Manamayee and 3 others reported in 2001(4)CTC 475 where in an identical issue, this Court has held as follows:

"10. Therefore, in all probabilities, the lower Court should have permitted the petitioner allowing the application for reopening the case for letting in evidence. Hence, the order passed by the lower Court refusing to permit the petitioner to reopen the trial to let in additional evidence is neither just nor reasonable, especially at any stage of the suit, denial of full opportunity to exhaust their remedies is definitely against the interest of justice and hence the fair and decretal order as passed by the lower court dismissing the interlocutory application filed by the petitioner is bad in law and becomes only liable to be set aside."

11. On perusal of the material on hand, it is inferred that the evidence on the side of the Revision Petitioner was closed on 13.06.2016. The petitioner has not let in evidence, citing the pendency of the CRP.No.4054 of 2013. Now that the Civil Revision Petition is allowed and a fresh commission came to be ordered on 23.08.2016. In view of the developments, naturally, the petitioner shall be given an opportunity to put forward his case for adducing evidence on

the basis of additional materials, now, available.

12. Considering the facts and circumstances of the case, the petitioner is given one more opportunity to reopen his side for letting in evidence. However, since the petitioner has taken adjournment on number of occasions and prolonged the matter, the Trial Court is directed to conduct the proceedings on a day to day basis and complete the trial within a period of two months and decide the matter on merits and in accordance with the law.

13. The petitioner/defendant is directed to co-operate with the Trial Court in completing the trial expeditiously.

14. With these observations, this Civil Revision Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

18.07.2017

Speaking order/Non-speaking order

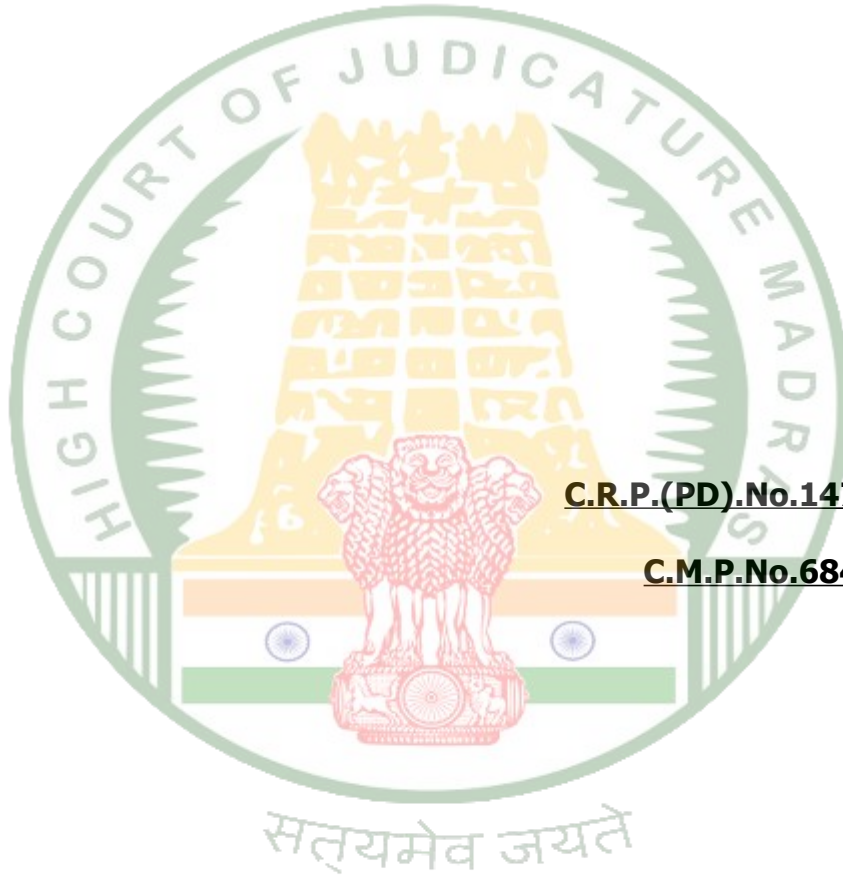
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M.GOVINDARAJ, J.

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