

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.2024 and 2025 of 2017
& C.M.P. No.9865 of 2017

Varadappa Naicker (died)
(deceased 1st defendant)

1. Kandasamy
2. K.Kannan

.. Petitioners in both
CRPs.

Vs.

1. Pappu

Thangammal (died)
deceased 2nd plaintiff

2. M.Balasubramaniam
3. M.Arumugham
4. Seventheeswaran
5. Sengottian
6. Arayee
7. Raja

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8. Vannan

9. Selvarani

10.Rathinam

11.Thangamani

12.Kavitha

.. Respondents in
both CRPs.

(Respondents 1 to 9 given up as
unnecessary parties vide separate memo)

Prayer in both the CRPs: Civil Revision Petitions filed under
Article 227 of the Constitution of India, against the fair and decretal
order dated 27.03.2017 made in I.A.Nos.65 and 66 of 2017 in
O.S.No.18 of 2008 on the file of the Sub-Court, Rasipuram.

For petitioners : M/s.Babu Rangasamy
Associates

For respondents : Mr.P.Mathivanan

COMMON ORDER

Civil Revision Petitions are filed against the fair and decretal
order dated 27.03.2017 made in I.A.Nos.65 and 66 of 2017 in
O.S.No.18 of 2008 on the file of the Sub-Court, Rasipuram.

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2. The petitioners are the defendants 2 & 7, respondents 1 to
3 are the defendants 3, 5 & 6, respondents 4 to 9 are the
defendants 8 to 13 and the respondents 10 to 12 are the plaintiffs

in O.S.No.18 of 2008. The respondents 10 to 12 filed suit for partition and separate possession, claiming to be the legal heirs of one Chinnusamy. Originally, the suit was filed in the year 1999 before the Sub-Court, Namakkal. The petitioners and other defendants filed written statement and are contesting the suit. Subsequently, the said suit was transferred to Sub-Court, Rasipuram and renumbered as O.S.No.18 of 2008. The respondents 10 to 12 let in evidence and closed their side. The petitioners examined DW1 on 02.08.2010 and the suit was posted for cross examination of DW1 on 19.08.2010. Even after taking number of adjournments, the petitioners did not appear for cross examination. On the other hand, petitioners have filed number of applications one after another to drag on the suit. On 05.02.2014, DW1 was not present for being cross examined and his evidence was closed and suit was posted for arguments. At that stage, Pappathi and Susila filed I.A.No.40 of 2014 for impleading them as defendants 14 and 15 in the suit. The said application was dismissed.

3. The petitioners and first defendant filed I.A.No.66 of 2017 to reopen the case and I.A.No.65 of 2017 to recall DW1 for being

cross examined.

4. The respondents 10 to 12 filed counter affidavit and opposed the said applications.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed both the applications.

6. Against the order of dismissal dated 27.03.2017 made in I.A.Nos.65 and 66 of 2017, the present Civil Revision petitions are filed by the petitioners/defendants 2 and 7.

7. Heard the learned counsel for the petitioners and respondents and perused the materials available on record.

8. From the materials available on record, it is seen that DW1 was cross examined in chief on 02.08.2010 and from that date onwards, the case was posted for cross examination of DW1. After giving ample opportunity to DW1 to appear before the Court for being cross examined, the learned Judge closed the evidence of

DW1. The reason given by the petitioners was that on 05.02.2014, a close relative of first petitioner died and therefore, they could not appear before the Court, is not substantiated by the petitioners.

9. On the other hand, the respondents 1 to 3 stated that there was no such death in the relative's family of the petitioners. The petitioners also stated that they have filed the applications on 05.02.2014 itself to reopen the case and recall DW1 stating that the said applications were neither numbered nor returned. The petitioners have not produced any materials to substantiate their contention.

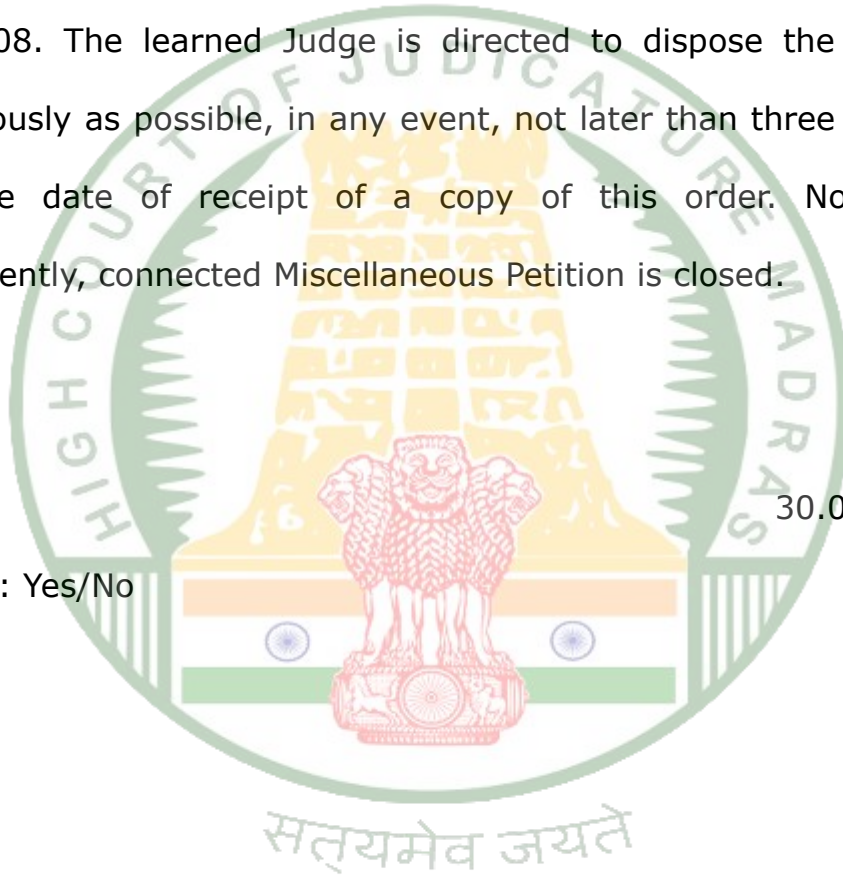
10. Considering all the materials on record and taking note of the fact that the suit was filed in the year 1999 and for want of jurisdiction, renumbered as O.S.No.18 of 2008, DW1 was examined in chief on 02.08.2010, his evidence was closed on 05.02.2014 and the present applications were filed in the year 2017, the intention of the petitioners is only to drag on the proceedings. Both the applications are devoid of merits. In the circumstances, I hold that there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 27.03.2017.

11. In the result, the civil revision petitions are dismissed. The suit is of the year 1999 and after it has been transferred from Sub-Court, Namakkal to Sub-Court, Rasipuram, it is pending from the year 2008. The learned Judge is directed to dispose the suit as expeditiously as possible, in any event, not later than three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

30.06.2017

Index : Yes/No

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V.M.VELUMANI, J.

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To

The Sub Court,
Rasipuram.



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