

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2017

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.PD.No.3666 of 2017

and

C.M.P.No.17034 of 2017

E.Rukmani

.. Petitioner/Defendant

Vs.

1. Murugarselvi

2. Minor.S.Dhina Eswar
(Minor represented by
mother Murugaselvi)

.. Respondent/ Plaintiff

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 10.08.2017 made in I.A. No.788 of 2017 in O.S.No.282 of 2008 on the file of the Hon'ble I Additional District and Sessions Judge, Tiruppur.

WEB COPY

For Petitioner : Mr.B.R.Shankaralingam

For Respondents : Mr.V.Kadhirvelu

ORDER

The present Civil Revision Petition is filed to set aside the fair and decreetal order dated 10.08.2017 made in I.A. No.788 of 2017 in O.S.No.282 of 2008 on the file of the Hon'ble I Additional District and Sessions Judge, Tiruppur.

2. The learned counsel for the petitioner submitted that the respondent/ plaintiff has filed a suit for partition and separate possession. In the aforesaid suit, the trial commenced, evidence of the plaintiff was concluded and posted for examination of DW1. At this juncture, the revision petitioner, who is the 1st defendant in the suit, filed an application for appointment of Advocate Commissioner to inspect item 35, the back side and adjacent portion of the suit property. Therefore he was not able to proceed with the examination on the side of the defendants. The trial Court returned the application, closed the defendant side evidence and posted the case for arguments. At this stage, it is necessary to reopen the case, to let in oral evidence and to file proper application for appointment of commissioner.

3. The respondent / Plaintiff has filed counter statement contending that the revision petitioner / first defendant has filed the

present petition in order to drag on the proceedings and therefore the court below has rightly dismissed the said application. It was further submitted that the petitioner was estopped from raising all the other allegations after cross examination of the witness PW1.

4. By considering the contention of the learned counsel for both the parties, the trial court passed a detailed order stating that the aforesaid suit was adjourned from time to time for the defendants side evidence from 16.11.2016 to 07.12.2016 and thereafter the matter was referred to the mediation centre. Since no settlement was arrived between the parties, again the case was referred back to the court for hearing on 21.12.2016. At this stage, the revision petitioner filed IA No. 17 of 2017 seeking leave of the court to file additional written statement of the first defendant and the same was allowed. Again the petitioner filed an application to recall PW1 for cross examination and the same was allowed, following which he was cross examined on 14.06.2017. Thereafter only, the case was posted for defendant's side evidence on 28.06.2017 and again the matter was adjourned to 05.07.2017 and 12.07.2017. On that date, the defendant was not ready to adduce the evidence and therefore the defendant's side evidence was closed. Hence, the said Interlocutory Application has been filed before the Court below to re-open the case to let in

evidence of DW1.

5. The learned counsel for the petitioner fairly conceded that even though there was a delay on the side of the defendant, this Court may consider and grant one more opportunity to the defendant to let-in evidence on defendant's side . Further the learned counsel submitted that the petitioner will co-operate for the trial, without getting any adjournment before the trial court. Therefore, the order passed by the trial court may be set aside

6. Per contra, the learned counsel for the respondent would submit that the detailed reasons recorded by the court below would clearly show that there is no error in the order passed by the trial court and there is no cause of action. The petitioner, with an intention to drag on the proceedings was filing applications, one after the other and that the present application is also filed with an intention only to drag on the suit proceedings. Therefore there is no warrant to interfere with the order passed by the Court below.

7. By considering the rival submissions of both the parties and on the perusal of the materials, it is found that the court below has passed the detailed order, by stating that the aforesaid suit is

posted for trial on 16.11.2015 and subsequently it was posted for defendant's side evidence on 18.01.2016 and for one reason or the other, at the instance of the defendant, the suit has been adjourned from time to time, till 04.01.2017. Therefore the order passed by the trial court does not warrants any interference, by this Court. However the learned counsel for the petitioner seeks an opportunity to the defendants, to adduce oral evidence on their side to determine the real issues involved in the suit or otherwise the revision petitioner will be prejudiced.

8. The learned counsel for the respondent also fairly conceded that one more opportunity shall be granted to the petitioner, however the petitioner/ defendant shall not take the opportunity to drag on the proceedings.

9. In view of the above submissions and undertaking made by the learned counsel for the defendant/ Petitioner, the order passed by the trial Court is set aside and the I.A. No. 788 of 2017 is allowed. As per the undertaking given by both the parties the trial court is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order.

D.KRISHNAKUMAR. J,

aav

10. Accordingly, the Civil Revision Petition is allowed. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

31.10.2017

Speaking/Non-speaking order

Index : Yes/No

aav

Note : Issue order copy on 08.11.2017

To

The I Additional District and Sessions Judge,
Tiruppur.

WEB COPY

CRP.PD.No.3666 of 2017
and
C.M.P.No.17034 of 2017