

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2017

CORAM

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

CRP.PD.No.4051 of 2017
and CMP.No.18949 of 2017

1. Palanisamy

2. P.Subramaniam

3. P.Sellamuthu

4. Deivanai

5. S.C.Chellamuthu

6. Arunachalam

7. Thulasimani

..Petitioners

1. Arumugam

2. Sathishkumar

3. Madhankumar

4. Chellamuthu

5. Viswanathan

6. Eswari

7. Kolandasamy

8. Ammaniammal

9. Krishnamoorthy

10. Savitha

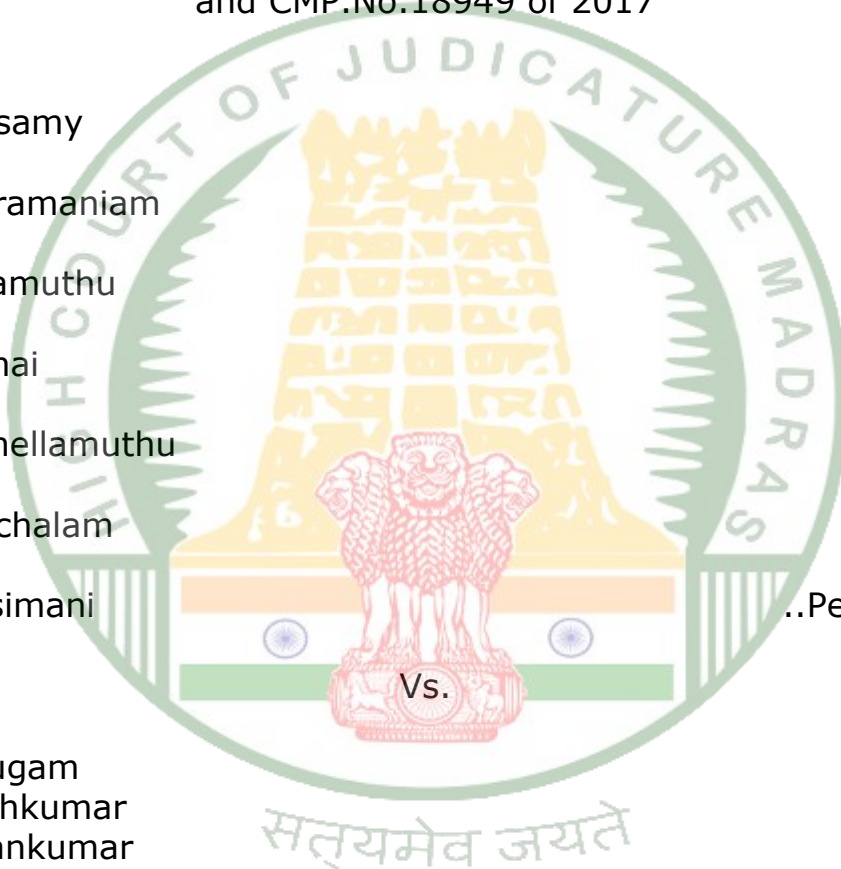
11. Chenniappan

12. Vijapuri

13. Thangamuthu

14. Chenniappan

15. Ponnusamy



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16. Periasamy
 17. Chennimalaigounder
 18. Lakshmi
 19. Govindasamy
 20. Thangamuthu
 21. Ammaniammal
 22. Santhi

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and final order passed in I.A.No.590 of 2017 in OS.No.152 of 2010 on the file of the Subordinate Court, Perundurai dated 01.09.2017 to set aside the same.

For petitioners : Mr.A.Sundaravadhanan

ORDER:

According to the petitioner, the respondents herein have filed a suit in O.S.No.152 of 2010 for partition, separate possession and permanent injunction against the revision petitioners. The aforesaid suit has been filed in the year 2010. Thereafter, trial was commenced and posted for plaintiff's side for further evidence on 08.02.2017. There is no further witness on the side of the plaintiffs. So the court closed plaintiff side witness. The respondents filed an application in IA.No.196 of 2017 to reopen the

case and the same was allowed on 24.03.2017. On that day, the plaintiffs have not produced the witness and finally posted on 17.04.2017 for evidence and again posted on 01.06.2017. Summons were served to the witness. But witness was not turned up and posted on 02.06.2017, the matter was adjourned for four times. In spite of that, witness has not turned up. Therefore, the plaintiff side evidence was closed. Again another petition was filed by the respondents in I.A.No.471 of 2017 and the same was allowed on cost. Even then, the respondents have not produced any witness. The said application was also closed and the instant application in I.A.No.590 of 2017 has been filed by the respondents. The petitioners have filed counter statement before the court below by narrating the aforesaid fact. But the court below, without considering the objection made by the revision petitioners has granted an opportunity to the respondent by allowing the instant application. Therefore, the petitioners have filed the present Civil Revision Petition before this Court.

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2. The learned counsel for the petitioners would submit that the aforesaid fact would reveals that the respondents / plaintiffs have filed application one after another only to drag on the proceedings. Already there are several opportunities were granted

to the respondents / plaintiffs to examine the witness on the side of the plaintiffs. Without utilising the opportunities, the respondents are dragging on the proceedings. Therefore, the order passed by the court below is liable to be set aside.

3. Considered the facts and submissions made by the learned counsel for the petitioners and perused materials.

4. The trial court has allowed the instant application by holding that despite several opportunities were granted to the respondents / plaintiffs they have not chosen to examine the witness, but in the interest of justice for providing an opportunity, the application is allowed. The trial court also directed the respondent to pay the cost of Rs.2,000/- to the revision petitioner.

5. By considering the nature of the relief as prayed for in the suit and for providing an opportunity to the respondents / plaintiffs to examine the witnesses on their side, the trial court has considered and allowed the said application on payment of cost. Therefore, no prima facie case is made out to entertain the Civil Revision Petition. It is needless to say that the petitioner cannot take advantage of allowing this application and file similar

applications in future with the intention to delay the trial in the suit.

6. The Civil Revision Petition fails and accordingly, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

07.11.2017

Speaking/Non-speaking order
Index : Yes/No
Internet: Yes/No
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D.KRISHNAKUMAR. J,

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To
The Subordinate Court,
Perundurai



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