

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.537 of 2015

Nagammal

... Petitioner

Vs.

1.Renuka

2.Minor Ashok Kumar

Minor represented by his next friend
mother Mrs.Renuka

3.Chinnadurai

4.Janakiraman (deceased)

..Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C.,
against the fair and decretal order dated 11.08.2014 made in
I.A.No.99 of 2014 in O.S.No.133 of 2006 on the file of the District
Munsif Court, Polur, Thiruvannamalai District.

For Petitioner : Mr.S.Gunaseelan

For R1 and R2 : Mr.B.Gopalakrishnan

ORDER

The Civil Revision Petition is filed against the fair and decretal
order dated 11.08.2014 made in I.A.No.99 of 2014 in O.S.No.133 of
2006 on the file of the District Munsif Court, Polur, Thiruvannamalai
District.

2. The petitioner is plaintiff and respondents are the defendants in O.S.No.133 of 2006 on the file of the District Munsif Court, Polur, Thiruvannamalai District. The petitioner filed said suit for declaration and injunction. The respondents 1 to 4 are the daughter-in-law, grand son and sons of the petitioner respectively. The respondents 1 and 2 filed written statement on 19.10.2006 and are contesting the suit. The suit was dismissed for default on 05.11.2012 as petitioner failed to appear before the Court. The petitioner filed I.A.No.99 of 2014 to condone the delay of 421 days in filing the petition to restore the suit.

3. According to the petitioner, she engaged one advocate by name Selvanayagam and he did not inform about her, the stage of the suit or dismissal of the suit. When she made enquiries through present advocate, she came to know that her previous counsel left Polur three years back and suit was dismissed for default. Immediately, she filed present application to restore the suit.

4. The respondents 1 and 2 filed counter affidavit and opposed the said application and submitted that the respondents 1 and 2 filed suit in O.S.No.371 of 1999 for maintenance and partition and

obtained decree. The petitioner in collusion with the third respondent, who is her son, filed present suit to prevent the respondents 1 and 2 from enjoying the fruits of the decree. Petitioner and third respondent have engaged one advocate by name V.C.Shanmugam and at every stage, they are filing petition after petition and they are dragging on the proceedings and hence, prayed for dismissal of the application.

5. Before the learned Judge, the petitioner was examined as P.W.1 and she did not file any document. On behalf of the respondents, no oral and documentary evidence was let in.

6. The learned Judge considering the averments made in the affidavit, counter affidavit, evidence of P.W.1 and admission of the petitioner in her cross-examination that she did not file any suit and that she is going to file suit and denied having filed present application, dismissed the application.

7. Against the said order of dismissal dated 11.08.2014 made in I.A.No.99 of 2014, the present Civil Revision Petition is filed by the petitioner.

8. Heard the learned counsel for the petitioner as well as the respondents 1 and 2 and perused the materials available on record.

9. From the materials available on record, it is seen that the petitioner has filed suit for declaration and injunction against the respondents. This fact is not disputed by the respondents 1 and 2. According to the respondents 1 and 2, petitioner in collusion with third respondent, who is her son, protracting the suit filed by the respondents 1 and 2 filed for maintenance and partition. The respondents 1 and 2 have not disputed the fact that Advocate Mr.Selvanayagam earlier engaged by the petitioner left Polur three years back as contended by the petitioner. The learned Judge failed to consider this fact and that the respondents 1 and 2 have not disputed the fact that the petitioner has filed suit. It is no doubt true that in cross-examination, the petitioner has stated that she has not filed any suit.

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10. The contention of the learned counsel for the petitioner that the petitioner is an illiterate village woman and the learned Judge ought to have considered the averments made in the affidavit and proof affidavit and passed orders on merits, has considerable

force. The parties are close relatives and the suit is for declaration and injunction. In the circumstances, in the interest of justice, the petitioner should be given an opportunity to put forth her case on merits.

11. For the above reason, impugned order of the learned Judge is set aside and the Civil Revision Petition is allowed on payment of costs of Rs.2,500/- (Rupees Two thousand five hundred only) to be paid by the petitioner to the respondents 1 and 2 within a period of three weeks from the date of receipt of a copy of this order. If the petitioner fails to pay the amount, the Civil Revision Petition will stand dismissed. As the suit is of the year 2006, the learned Judge is directed to dispose the suit in O.S.No.133 of 2006 as expeditiously as possible, in any event, not later than three months from the date of payment of costs. No costs.

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Index : Yes/No

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V.M.VELUMANI, J.

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To

The District Munsif, Polur, Tiruvannamalai District.



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