

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1140 of 2013
& M.P.No.1 of 2013

R.Subramanian @ Mani

.. Petitioner

Vs.

- 1.R.Surendran
- 2.Savithiri Ramachandran
- 3.Uma Ganesan
- 4.S.Rajagopalan (Died)
- 5.S.Sankaran
- 6.S.Vishalatchi (Died)
- 7.M.s.Swaminathan (Died)
- 8.M.S.Padmanabhan
- 9.M.S.Mani
- 10.Col.M.S.K.Moorthy
- 11.Kamatchi Ramamurthy
- 12.V.Ramanathan (Died)
- 13.C.Vijayakumar
- 14.C.K.Kumar
- 15.C.Srinivasan
- 16.Prasad Mani
- 17.Syamala Ravi
- 18.Usha Krishnakumar
- 19.Nirmala Reddy
- 20.V.Krishnan (Died)
- 21.Kamala (Died)
- 22.Sakunthala Ramanathan
- 23.Visalam Swaminathan
- 24.Thangamani Krishnan
- 25.Banumathi Iyer
- 26.Malathy Kumar
- 27.R.Vijayalakshmi
- 28.Kamakshi Sridharan
- 29.R.Uma Shankar
- 30.R.Indira

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 05.03.2013 made in I.A.No.2085 of 2013 in O.S.No.4271 of 1998 on the file of the XIII Assistant City Civil Court, Chennai.

For petitioner : Mr.R.Rajarajan

For R1 : Mr.P.T.Nalinkumar

For R2 to R26 : Given up vide batta

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 05.03.2013 made in I.A.No.2085 of 2013 in O.S.No.4271 of 1998 on the file of the XIII Assistant City Civil Court.

2. The petitioner is 21st defendant, first respondent is the plaintiff, respondents 2 to 17 are the defendants 1 to 18, respondents 18 to 20 are the defendants 28 to 30 and respondents 21 to 26 are the defendants 22 to 27 in O.S.No.4271 of 1998 on the file of the XIII Assistant City Civil Court. The first respondent filed the said suit against the respondents 2 to 26 and others for partition. The petitioner filed written statement on 29.10.2007 and is contesting the suit. When the suit was posted for cross examination of PW1 on 09.01.2013, the petitioner and respondents 21 to 26 sought for an adjournment. The learned Judge adjourned the suit for cross examination of PW1 to 30.01.2013, on condition that the

petitioner and respondents 21 to 26 should pay a cost of Rs.1000/- to the first respondent on or before 29.01.2013. On 30.01.2013, the learned counsel for the first respondent filed a memo stating that the petitioner and respondents 21 to 26 have not paid cost as ordered by the Court on 09.01.2013. The learned Judge closed the evidence of PW1. Subsequently, the petitioner and respondents 21 to 26 filed I.A.No.2085 of 2013 under Section 148 A read with Section 151 of C.P.C for extension of time till 15.02.2013 for the payment of a cost of Rs.1000/- to the first respondent. According to the petitioner and respondents 21 to 26, on 23.01.2013, they sent the cost ordered by the Court to the first respondent by money order to the address of the first respondent given in the plaint. The first respondent has changed his residence and cost was not paid to the first respondent by the postal authority. According to the petitioner, he and respondents 21 to 26 were ready to cross examine PW1 on 30.01.2013. The failure to pay the cost is not wilful.

3. The first respondent filed counter affidavit and denied all the averments made by the petitioner and other defendants. The first respondent submitted that the petitioner and respondents 21 to 26 have taken number of adjournments to cross examine PW1. This Court, on earlier occasion in the A.S.No.805 of 2009, filed by the petitioner and other defendants, directed the Trial Court to dispose

the suit within three months from the date of receipt of a copy of that order. The petitioner and respondents 21 to 26 did not cooperate in conducting the trial. The intention of the petitioner and respondents 21 to 26 is only to drag on the proceedings. The petitioner and respondents 21 to 26 could have tendered rent to the plaintiff through their counsel. The petitioner and respondents 21 to 26 were not ready to cross examine PW1 on 30.01.2013. On failure to pay the cost within time limit, the Court has closed the evidence and has become functus officio.

4. The learned Judge, considering the judgment relied on by the learned counsel for the first respondent reported in **2006 (2) LW 145** and the fact that the petitioner and respondents 21 to 26 have taken more than 6 adjournments to cross examine PW1, held that they could have paid cost to the counsel for the first respondent instead of sending it by money order. Having considering the order granting three weeks time to the petitioner and respondents 21 to 26 to pay the cost to the first respondent and the fact that the petitioner and respondents 21 to 26 are not cooperating for conducting the trial of the suit inspite of this Court directing the learned Judge to dispose the suit within three months, dismissed the application filed by the petitioner and respondents 21 to 26.

5. Against the said order dated 05.03.2013 made in I.A.No.2085 of 2013 in O.S.No.4271 of 1998, the petitioner has come out with the present Civil Revision Petition.

6. Heard the learned counsel appearing for the petitioner as well as the first respondent and perused the materials available on record.

7. From the materials available on record, it is seen that the petitioner and respondents 21 to 26 have taken number of adjournments for cross examination of PW1. They did not cooperate in conducting the trial in spite of the orders of this Court. The learned Judge, at the request of the petitioner and respondents 21 to 26, granted three weeks time for cross examination by the petitioner and other defendants, on condition that they should pay a sum of Rs.1000/- to the first respondent. In spite of the conditional order, the petitioner and other defendants have not complied with the same and the learned Judge, recording the memo filed by the learned counsel for the first respondent that conditional order is not complied with, closed the evidence of the PW1.

8. From the above facts, it is clear that the intention of

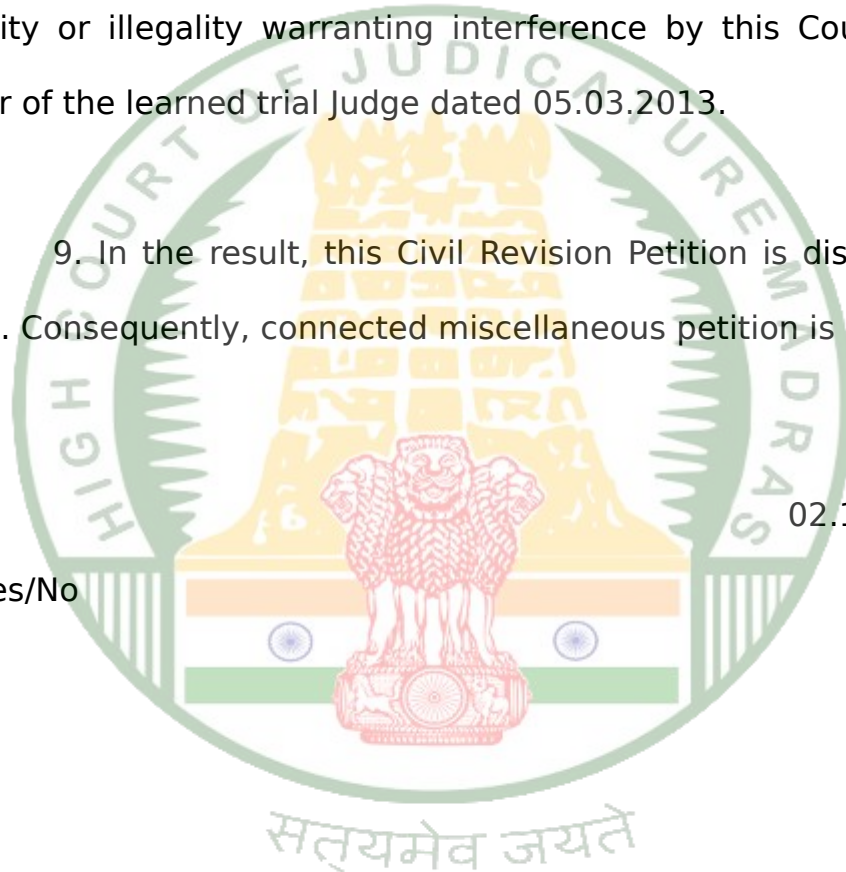
the petitioner and respondents 21 to 26 is only to drag on the proceedings. The learned Judge has considered the judgment relied on by the learned counsel for the first respondent and dismissed the application by giving cogent and valid reason. There is no irregularity or illegality warranting interference by this Court with the order of the learned trial Judge dated 05.03.2013.

9. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

02.11.2017

Index: Yes/No

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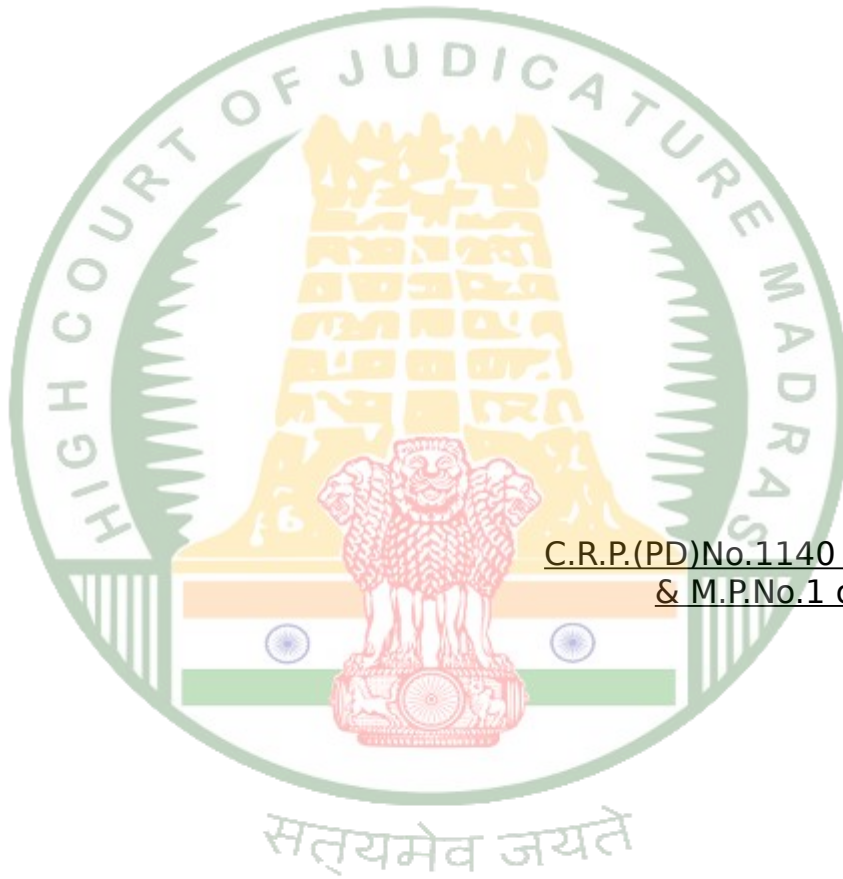
The XIII Assistant Judge,
City Civil Court,
Chennai.



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V.M.VELUMANI, J.

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