



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2017

CORAM :

WEB COPY

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.R.P. (MD) .No.762 of 2017
and
C.M.P. (MD) .No.3474 of 2017

T.Paulthurai ... Petitioner/Petitioner/ Plaintiff
Vs.

1. Kumaresan
2. Pushpavathi
3. Mahendran
4. Karpagam ... Respondents/Respondents/Defendants 2 to 5

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 25.11.2016 passed in I.A.No.722 of 2016 in O.S.No.183 of 2005 on the file of Principal District Munsif Court, Nagercoil, Kanyakumari District.

For Petitioner : Mr. M.P.Senthil

ORDER

The revision Petitioner is the plaintiff in O.S.No.183 of 2005 on the file of Principal District Munsif Court, Nagercoil, Kanyakumari District. It is a suit for specific performance. After examining the witnesses on behalf of the plaintiff, when the matter was taken up for examining the defendants side witnesses, the revision petitioner has filed an application to reopen the case for examining two witnesses, one who have signed as witness and scribe and another the witness to the document.

2. The Trial Court has entertained the petition in I.A.No.176/2016 dated 02.06.2016. Despite being permitted to examine new witnesses, the plaintiff could not avail the opportunity due to boycott of court by the Advocates. Hence, the Trail Court has closed the plaintiff's side on 22.07.2016 and ordered for examination of defendants' side witnesses. Under these circumstances, the present application in I.A.No.722/2016 has been filed for reopen the case.

3. The trial court has dismissed the said application to <https://hccopen.courts.mv.in/cases/> on the ground that the Advocates have resumed work as early as 18.06.2016 and when the plaintiff /Petitioner was permitted to examine the witnesses on his application as early as



18.04.2016, no steps were taken to summon those witnesses till 15.07.2016, therefore, the plaintiff's side witnesses was closed and the matter was adjourned for examination of the defendants' side witnesses. Under such circumstances, the application to reopen the plaintiff's side evidence is unnecessary and unwarranted and also a belated one.

4. The learned counsel appearing for the revision petitioner would submit that, due to the continuous boycott of Advocates, he could not take steps to summon the witnesses, whom the court has permitted to examine, by the order dated 18.04.2016. If one chance is given to him, he himself will produce the witnesses and complete the examination of the witnesses. If such an opportunity is not given to him, he would be deprived of putting forth his best evidence available with him in support of this case and grave injustice will be caused to him.

5. It is true that the suit is of the year 2005 and pending for more than 11 years. However for want of permission to examine necessary witnesses, the plaintiff should not be deprived of redressing his grievance in the best manner, therefore, this court is inclined to allow the revision petition on the following terms:-

" The order passed in I.A.No.722/2016, dated 25.11.2016 is set aside. The revision petitioner is hereby directed to the marshal witnesses before the Trial Court on the next hearing date. On such production of witnesses, the Trial Court shall examine the witnesses and shall give an opportunity to the defendants to cross examine the witnesses and thereafter proceed with the Trial. It is made clear that if the revision petitioner fails to produce the witnesses on the next hearing date, he shall lose the opportunity forthwith"

6. Accordingly, the Civil Revision Petition is allowed with the above direction. Consequently, connected miscellaneous petition is closed. No Costs.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif Court,
Nagercoil, Kanyakumari District.

+1 cc to Mr.M.P.Senthil, Advocate, SR.No. 51864

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