



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.2393 of 2016 (PD)

and

C.M.P (MD) No.11258 of 2016

KrishnasamyPetitioner/Respondent/Defendant

Vs.

1.Shanmugaiah

2.Selvakumar

3.Velladurai ...Respondents/Petitioners/Plaintiffs

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to call for the records of the fair and decreetal order, dated 07.09.2016 made in I.A.No.239 of 2016 in O.S.No.216 of 2015 on the file of District Munsif Court, Kovilpatti and to set aside the same.

For Petitioner : Mr.V.Sasikumar

For Respondents : Mr.R.Vijayakumar

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decreetal order, dated 07.09.2016 made in I.A.No.239 of 2016 in O.S.No.216 of 2015 passed by the District Munsif, Kovilpatti.

2.The petitioner is the defendant and the respondents are the plaintiffs. The respondents filed suit in O.S.No.216 of 2015 before the District Munsif, Kovilpatti for declaration that the respondents 2 & 3 are the absolute owner of the suit property and for permanent injunction restraining the petitioner from interfering with respondents peaceful possession and enjoyment of the suit property. The petitioner filed written statement and denied the averments mentioned in the plaint. The respondents filed I.A.No.239 of 2016 for permission to file reply statement under Order 8 Rule 9 of CPC., along with reply statement.

3.The petitioner filed counter affidavit and submitted that the averments made by the respondents in the reply statement is contrary to the original plaint and it is not in consonance to the



averments made in the plaint and respondents have given wrong survey number in the plaint. The petitioner and his sister filed suit in O.S.No.12 of 2010 for injunction against the first respondent and the said suit was decreed. The first appeal in A.S.No.46 of 2012 filed by the first respondent was dismissed. The respondents have suppressed this fact and created documents to grab the property and filed suit. The respondents have not stated the averments made in the reply statement in the plaint and therefore, prayed for dismissal of the application.

4.The learned Judge considering all the materials on record, averments in the plaint and reply statement allowed the application holding that objection raised by the petitioner for granting permission to the respondents to file reply statement can be decided only after considering oral and documentary evidence and the said objection cannot be decided in the application filed by the respondents.

5.Against the said order of allowing I.A.No.239 of 2016, dated 07.09.2016, the petitioner has come out with the present Civil Revision Petition.

6.I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and also perused all the materials available on record.

7.As per Order 8 Rule 9 of CPC any pleading subsequent to filing of the written statement can be filed only with leave of the Court. The Court has discretion to grant permission imposing terms as the Court thinks fit in the circumstances of the case. The learned Judge has considered all the materials and has rightly held that the issue can be decided only after conclusion of trial by considering oral and documentary evidence. The petitioner has filed written statement on 19.02.2016. The respondents filed I.A.No.239 of 2010 on 26.02.2016 for permission to file reply statement and also filed reply statement. In the circumstances, I hold that there is no illegality or irregularity in the order passed by the learned Judge warranting interference by this Court.

8.As per Order 8 Rule 9 Court can grant leave to the party to file reply statement by imposing terms in the circumstances of each case which means that Court has discretion to award costs. Considering the various objections raised by the petitioner, it will be in the interest of justice, if petitioner is compensated by awarding costs, the respondents are directed to pay a sum of Rs.1,000/- as costs to the petitioner. The respondent is are directed to pay a sum of Rs.1,000/- as costs directly to the learned counsel for the petitioner within one week from the date of receipt of a copy of this order.

<https://hcservices.ecourts.gov.in/hcservices/>

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



closed.

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/True copy/

Sd/-
Assistant Registrar (CS-III)

Sub Assistant Registrar

To
The District Munsif,
Kovilpatti.
+1cc to Mr.V.Sasikumar, Advocate, Sr.11267
+1cc to Mr.R.Vijayakumar, Advocate, SR.11385

C.R.P (MD) No.2393 of 2016 (PD)
28.02.2017

AM
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