

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No. 747 of 2018

and

C.M.P No. 3786 of 2018

Balasubramanian

.. Petitioner

Vs

1. Dhanalakshmi
2. Ganesa Naicker
3. S. Elumalai
4. S.K. Iyengar
5. S. Navarathnamal Jain
6. B. Sundaraju

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, seeking to set aside the order and the decretal order dated 10.11.2017 made in I.A. No. 554 of 2017 in O.S. No.190 of 2006 on the file of learned Additional District -1, Chengalpattu.

For Petitioner : Mr. R. Sreerangan

ORDER

This revision petition is filed seeking to set aside the order and the decretal order dated 10.11.2017 made in I.A. No. 554 of 2017 in O.S. No.190 of 2006 on the file of learned Additional District -1, Chengalpattu.

2. The learned counsel for the petitioner would submit that the petitioner has filed the suit in O.S. No. 190 of 2006 for partition and separate possession. In the aforesaid suit, the 6th defendant filed his written statement on 22.09.2006. Thereafter, the petitioner/ plaintiff filed an application in I.A. No. 554 of 2017, to reopen the evidence of the plaintiff and permit the plaintiff for letting further evidence of PW3. According to the petitioner, the court below has erroneously dismissed the aforesaid application. Aggrieved by the same, the present revision petition has been filed before this Court.

3. The court below dismissed the application, observing that on careful perusal of the case diary, it is found that sufficient/ ample

opportunities were given to the plaintiff to conduct the case. But, the plaintiff had failed to take appropriate steps to prove his rights and utilise the opportunities given to him. The petitioner/ plaintiff has not produced the 'Will' pertaining to the suit. Further no reasons have been shown in the affidavit filed by the petitioner, for non examination of PW3, at the time of recording evidence of plaintiff. Further, the suit is of the year 2006, the evidence of both sides have been concluded, the defendant submitted his arguments through his counsel on 24.07.2017 and the case was posted to 04.08.2017 for further arguments of the learned counsel for the 6th defendant. Hence, the petitioner has filed the instant application only at the time of arguments of the defendants. Based on the above said reasons, the court below dismissed the application.

4. Further, the decision of the Hon'ble Supreme Court in ***Ram Rati vs. Mange Ram (D) through L.R.s and others [2016 (5) CTC 555]***, wherein paragraph 18 and 20 reads as follows:

"The settled legal position under Order 18, Rule 17, read with Section 151 of the C.P.C., being thus very clear, the impugned

Orders passed by the Trial Court as affirmed by the High Court to recall a Witness at the instance of the respondent "for further elaboration on the left out points", is wholly impermissible in law.

We are informed that during the pendency of the Appal, the evidence has been closed and what remains is only the final arguments. In view of the above, we direct the Trial Court to dispose of the Suits expeditiously and preferably within one month from the date of receipt of a copy of this Order."

5. This Court further relies on the decision of the Hon'ble Supreme Court in *Gayathri Vs. M.Girish* [2017 (4) CTC 321], wherein paragraph 8 reads as follows:

"In the said case, it has also been held that it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. That apart, it has also been held that the Courts should constantly endeavour to follow such a time schedule so that the purpose of amendments brought in the Code of Civil Procedure are not defeated. Painfully,

the Court observed:-

“... In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial Court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity 2 (2013) 14 SCC 18 had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still plaintiff has not placed those bills on record. It further shows that final arguments were heard on number of times and judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an

application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 CPC.”

8. In view of the above decisions of the Hon'ble Supreme Court and considering the facts and circumstances of the case, the submissions made by the learned counsel for the petitioner, this Court is not inclined to interfere with the order of the court below and the revision petition is liable to be dismissed.

9. In fine, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

01.03.2018

Index : Yes/ No

Speaking order/ Non speaking order

[Issue order copy on 26.04.2018]

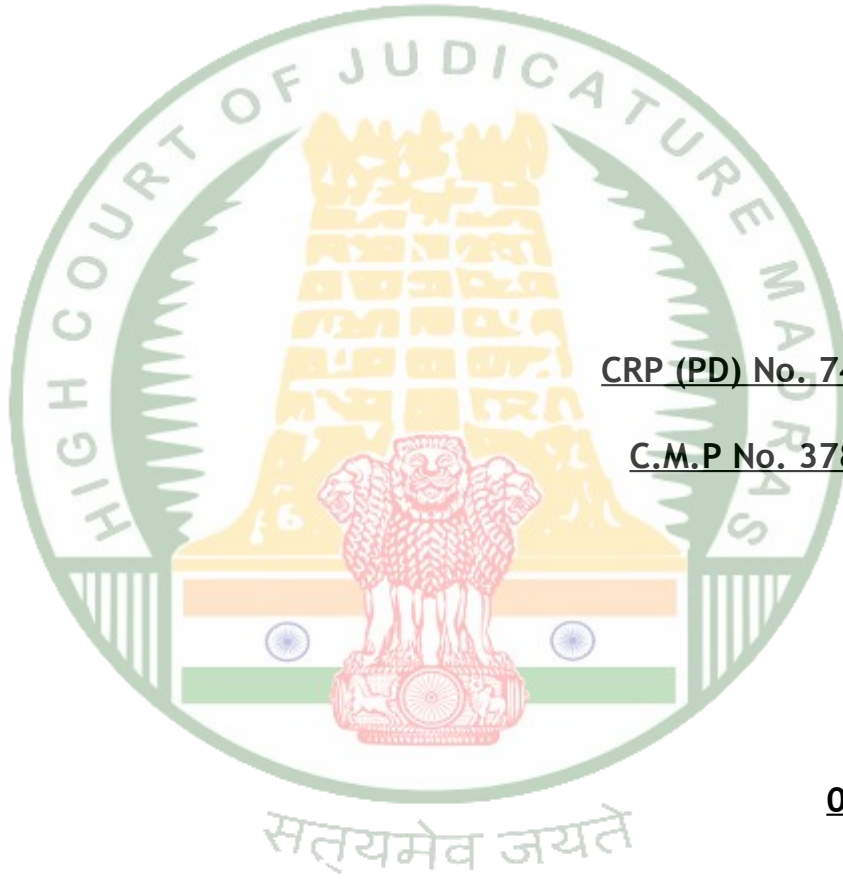
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To

The Additional District Court
Kancheepuram.

D. KRISHNAKUMAR J.,

avr



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