

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No. 3304 of 2016
and
CMP. No. 16853 of 2016

S. Pandiyan

.. Petitioner

Vs

1. Shanmugam
2. Palani
3. Dhanasekaran

.. Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decreetal order dated 04.08.2016 passed in I.A. No. 477 of 2016 in O.S. No. 52 of 2009 by the District Munsif at Tambaram.

For Petitioner : Mr. Dr. R. Sampath Kumar

For Respondents : Mr. M.S. Subramanian

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ORDER

This Civil Revision Petition is filed to set aside the order and decreetal order dated 04.08.2016 passed in I.A. No. 477 of 2016 in O.S.

No. 52 of 2009 by the District Munsif at Tambaram.

2. The respondents have filed the suit in O.S. No. 52 of 2009 for permanent injunction against the petitioner. In the aforesaid suit, the petitioner filed his written statement on 20.04.2016. Thereafter, the petitioner filed an application in I.A. No. 477 of 2016, to reopen the defendant's side evidence. Counter affidavit was filed by the respondents and the aforesaid application was dismissed by the court below. Challenging the same, the present Civil Revision Petition is filed before this Court.

3. According to the petitioner, he has not entered into the witness box for adducing evidence. The petitioner has also taken Subpoena to Assistant Survey Officer, Land Records Registration and Development Scheme, Unit II, Saidapet, Chennai -15. Therefore, the order of the court below is liable to be set aside. In support of his contention, the learned counsel for the petitioner relies upon the decision of ***Andhra Pradesh High Court in Aitipamula Shivalingam & anr. vs. Aitipamula Chinna Narasamma reported in 1998 (2) Andh LD 241.***

4. The learned counsel for the respondents would submit that the suit was posted for defendant's side evidence on 12.09.2013. From 2013, the petitioner was filing various petitions, without any valid grounds. Further, the defendant's side evidence was closed on 02.06.2014. The petitioner filed an Interlocutory Application to re-open the defendant's evidence and the same was allowed. The defendant's side witnesses were examined and the same was closed and posted for arguments. On 12.06.2015 the plaintiff side arguments was completed and posted for defendant's side arguments. At this stage, again the petitioner filed an application in I.A. No.566 of 2015 to reopen the defendant's side evidence and the same was also allowed. The SRO, Tambaram was examined by the petitioner. Again the petitioner filed I.A. No. 31 of 2016 to direct the respondents to prove the patta in the name of Muniyammal. The said application was dismissed and the defendant's side evidence was closed. Therefore, the court below has rightly dismissed the instant application and the same does not warrant interference by this Court.

5. Considered the facts of the case and the submission made by the learned counsel for both the parties.

6. Admittedly, the evidence on the defendant's side was closed on 02.06.2014. As stated in the earlier paragraphs, the petitioner filed an application to re-open the defendant's side evidence and the same was allowed. Again the present I.A. No.477 of 2016 has been filed by the petitioner, to re-open the defendant's side evidence. In the present application, the court below has observed that the petitioner has been filing various applications, which shows the intention of the petitioner is only to drag on the proceedings and dismissed the application. In the decision of *Andhra Pradesh High Court in Aitipamula Shivalingam*, relied upon by the petitioner, it was held that if the Court is satisfied that the aim of the party is not intended to fill up the lacunae or cover up the gaps, then the court can permit a party for examining himself/herself at a later stage.

7. Further, in *Ram Rati vs. Mange Ram (D) through L.R.s and others [2016 (5) CTC 555]*, Hon'ble Supreme Court in 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."

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 submissions, the facts of the case in hand and the decisions cited supra, the order passed by the court below is perfectly valid in law and the same is confirmed. At this stage, learned counsel appearing for both parties, undertake to co-operate for early disposal of the pending applications. Therefore, the trial court is directed to dispose of the Interlocutory Applications in I.A. Nos. 698 and 699 of 2016, as expeditiously as possible, preferably within a period of eight weeks from the date of receipt of a copy of this order.

9. The Civil Revision Petition is dismissed, with the above direction. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

16.02.2018

[Issue order copy on 24.04.2018]

D. KRISHNAKUMAR J.,

avr

Index: Yes/ No
Speaking Order/Non Speaking Order
To
The District Munsif Court,
Tambaram.



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