

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 26.02.2018****CORAM :****THE HONOURABLE MRS.JUSTICE J.NISHA BANU****C.R.P. (PD) (MD) No.421 of 2018****and****C.M.P. (MD) No.1851 of 2018**

P.R.Radhakrishnan : Petitioner / Petitioner / Plaintiff

vs.

1.P.Muthumuniyandi

2.Srinivasan

3.Saravanan : Respondents / Respondents / Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 09.02.2018 made in I.A.No.13 of 2018 in O.S.No.31 of 2016 on the file of the Principal District Munsif, Manamadurai.

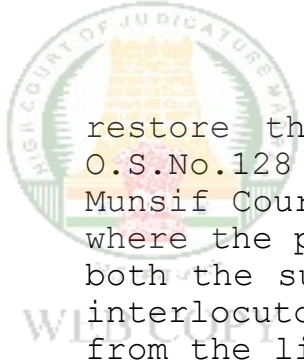
For Petitioner : Mr.A.K.Manickam

ORDER

This Civil Revision Petition has been filed to set aside the order passed by the learned Principal District Munsif, Manamadurai in I.A.No.13 of 2018 in O.S.No.31 of 2016 dated 09.02.2018.

2. The facts of the case are that the petitioner herein, as plaintiff, has filed a suit in O.S.No.31 of 2016, for the relief of Declaration that the Inam Settlement Deed dated 05.02.2015 executed by the 1st defendant in favour of the defendants 2 & 3 as null and void. The above suit was posted in the special list and the petitioner has filed an interlocutory application in I.A.No.13 of 2018 seeking to remove the suit from the list of special cases. The said interlocutory application came to be dismissed and against the same, the present civil revision petition came to be filed.

3. The learned Counsel for the petitioner would submit that the petitioner has already filed another suit in O.S.No.128 of 2014 before Additional District Munsif Court, Manamadurai, seeking the relief of permanent injunction and the parties in both the suits are one and the same. The said suit in O.S.No.128 of 2014 was dismissed for default on 15.09.2016 and the petitioner is taking steps to



restore the same. The petitioner seeks transfer of the suit in O.S.No.128 of 2014, after restoration, from the Additional District Munsif Court, Manamadurai to Principal District Munsif, Manamadurai, where the present suit in O.S.No.31 of 2016 is pending, so as to try both the suits together. For that purpose, he has filed the present interlocutory application to remove the suit in O.S.No.31 of 2016 from the list of special cases. But, the lower Court has erroneously dismissed the said petition and he seeks interference on the same.

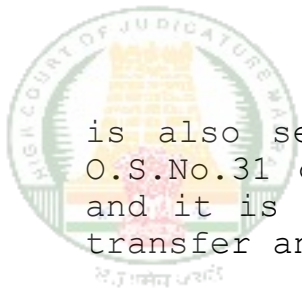
4. The respondents, through their counter before the Court below, have contended that in the said O.S.No.128 of 2014, the petitioner has earlier filed an interlocutory application in I.A.No.126 of 2015 to implead the respondents 2 & 3 herein as Defendants 3 & 4, which was allowed. Thereafter, another application in I.A.No.19 of 2016 came to be filed, seeking appointment of Advocate Commissioner and the same was dismissed on 08.02.2016, against which no appeal has been preferred. Subsequent thereto, despite several adjournments, due to non-appearance of the petitioner, the suit was dismissed for default on 15.09.2016. Without taking any steps immediately to restore the said suit, the petitioner has now come with the present petition only to drag the proceedings and therefore, before the Court below, they prayed for dismissal of the present interlocutory application.

5. Heard the learned Counsel for the petitioner and perused the documents placed on record. Notice to the respondents is dispensed with.

6. It is seen that the petitioner has earlier filed O.S.No.128 of 2014 seeking permanent injunction and allowed the same to be dismissed for default on 15.09.2016. When the present suit in O.S.No.31 of 2016 was posted for trial in the month of January 2018, in the special list cases, the petitioner, all of a sudden, came up before the Court, saying that he is taking steps and has filed an interim application before the Additional District Munsif Court, Manamadurai, to restore the earlier suit in O.S.No.128 of 2014 which was dismissed for default.

7. After restoration, he wants the suit in O.S.No.128 of 2014 to be transferred to Principal District Munsif Court, Manamadurai to club both the suits, viz., O.S.No.128 of 2014 & O.S.No.31 of 2016, together, so as to try them. But, it is not known what was the petitioner doing right from 15.09.2016, i.e., the date on which O.S.No.128 of 2014 was dismissed for default, till the suit in O.S.No.31 of 2016 listed in the month of January 2018 in special list. In other words, having waited for the past 1 ½ years, without taking any steps, all of a sudden, the present plea was raised by the petitioner to remove the suit from the list of special cases.

8. The intention of the petitioner is to stall the proceedings in O.S.No.31 of 2016, till O.S.No.128 of 2014 was restored and transferred, which is nothing but an abuse of the process of law. It



is also seen that prior to the dismissal of O.S.No.128 of 2014, O.S.No.31 of 2016 was filed and written statements were also filed and it is now known why the petitioner has not taken any steps for transfer and joint trial of both the suits at that time.

9. This Court feels it necessary to reproduce Order XVII Rule 1 (2) of the Code of Civil Procedure, which reads thus,

"Costs of adjournment - In every such case the Court shall fix a day for the further hearing of the suit and shall make such orders as to costs occasioned by the adjournment or such higher costs as the court deems fit."

It refers to costs of adjournment to be fixed by the Court and the said provision has nothing to do with the claim made by the petitioner and the petitioner has simply wasted the time of the Court by filing such application and such application has been filed only with an intention to drag on the proceedings in one way or other and it is a clear abuse of process of the Court.

10. In result, this civil revision petition stands dismissed. However, considering the facts and circumstances of the case, this Court, while declining to interfere with the impugned order, directs the learned Judge to dispose of the suit on day-to-day basis within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Manamadurai.

Gk

MV:GT:SAR3:14/03/2018/3P/2C

C.R.P. (PD) (MD) No.421 of 2018

26.02.2018