



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.01.2018

CORAM:

THE HONOURABLE MRS.JUSTICE NISHA BANU

C.R.P.(PD)(MD)No.6 of 2018

and

C.M.P.(MD)No.38 of 2018

Palaniyappan ...Petitioner / Petitioner / Defendant

Vs.

Viswanathan ...Respondent / Respondent / Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 17.02.2017 in I.A.No.20 of 2017 in O.S.No.185 of 2010 on the file of the District Munsif Cum Judicial Magistrate Court, Thirumayam.

For Petitioner : Mr.R.Sivalingam

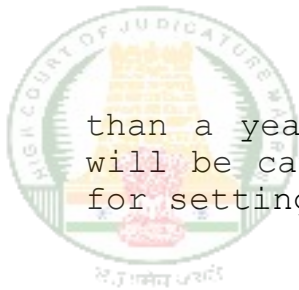
O R D E R

This Civil Revision Petition has been filed challenging the fair and decreetal order passed by the learned District Munsif Cum Judicial Magistrate, Thirumayam, in I.A.No.20 of 2017 in O.S.No.185 of 2010 dated 17.02.2017.

2. The fact of the case is that the respondent herein has instituted a suit in O.S.No.185 of 2010 for declaration and permanent injunction, wherein, after some rounds of litigation, when the matter was posted for judgment, the petitioner/defendant has filed an interlocutory application in I.A.No.20 of 2017, for re-opening the case, stating that he has to examine further witness as well as revenue authorities. The Trial Court, after careful consideration, has dismissed the petition. Aggrieved over the same, the present Civil Revision Petition came to be filed.

3. The learned Counsel for the petitioner would submit that he is in possession and enjoyment of the suit property and he has to prove the factum of possession. Therefore, he has filed the application for re-open, but the Trial Court, without appreciating the facts and circumstances, has dismissed the petition.

4. The learned Counsel for the petitioner would further submit that since the learned Judge has not passed any judgment for more



than a year, more particularly for the past one year, no prejudice will be caused, if the re-open petition is allowed. Hence, he prays for setting aside the impugned order.

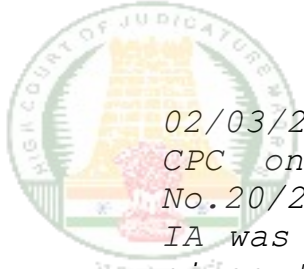
5. Heard the learned Counsel for the petitioner and perused the documents placed on record. Notice to the respondent is dispensed with.

6. A perusal of records would show that the defendant evidence, DW1 was completed on 27.09.2016 and thereafter, the Trial Court has granted sufficient time i.e., on 04.10.2016, 08.10.2016, 25.10.2016, 08.11.2016, 17.11.2016, 24.11.2016 and lastly on 01.12.2016, for further defendant evidence. The learned counsel for the petitioner/defendant has also made an endorsement that he had closed the evidence of the defendant side on 01.12.2016. Thereafter, the Trial Court has heard the arguments of the respondent/plaintiff on 15.12.2016 and adjourned the matter for arguments of the defendant side. Since the defendant was not ready, the case was adjourned to 19.12.2016, 20.12.2016, 23.12.2016, 05.01.2017 and lastly on 09.01.2017. As there was no progress on the side of the defendant, by way of advancing the arguments, the Trial Court has closed the evidence and reserved the matter for judgment on 17.01.2017. At this juncture, the petitioner/defendant has filed the impugned application on 12.01.2017 for re-opening the case for examination of further witnesses and revenue authorities in this case. The Trial Court, while dismissing the application, has observed that the petitioner/defendant has not mentioned the list of witnesses and the necessity to examine further.

7. When the matter came up for admission on 05.01.2018, this Court has directed the Registry to call for explanation from the District Munsif Cum Judicial Magistrate, Thirumayam, regarding the stage of the case and also the reasons for non-pronouncement of judgment, since no judgment was pronounced by the Trial Court, as on date.

8. As directed by this Court, the District Munsif cum Judicial Magistrate, Thirumayam has submitted his report dated 12.01.2018, in D.No.71 of 2018, wherein, it is stated as follows:

"I humbly submit that the case in original suit no.185/2010 was posted on judgment on 17/01/2017 meantime the defendant filed the IA under Section 151 CPCP to re-open the case for defendant's side further evidence on 12/01/2017. Hence, the judgment was not pronounced and IA is numbered in No.20/17 and after notice to the plaintiff, he filed the counter on 03/02/2017. Thereafter, enquiry heard and order passed in IA No.20/2017 on 17/02/2017 that this petition is dismissed and liberty to file written argument on the petitioner/defendant in O.S.No.185/2010 on or before 24/02/2017 and the case was posted for judgment on 02/03/2017. Meantime the defendant against file IA on



02/03/2017 to stay further proceeding of the case u/s.151 CPC on reason that he will prefer CRP against the IA No.20/2017. Hence, the suit was adjourned on 07/03/2017 and IA was numbered on 02/03/2017 in No.263/2017 and notice was given to the plaintiff. Meantime, the defendant filed memo that CRP(MD)No.17936 is filed against the order of IA No.20/2017 on 20.04.2017 and pending before the Hon'ble Madurai Bench of Madras High Court, Madurai. Therefore, this case is pending till date, as CRP pending and next hearing of the case is on 19/01/2018."

9. A perusal of this report would amply show the fact that the petitioner has filed petition after petition and he has also filed a memo before the Court below, stating that C.R.P., was filed. It is only at the instance of the petitioner, the pronouncing of the judgment has been halted, by one way or the other, which is nothing but a abuse of process of the Court.

10. Such kind of attitude of the petitioner/defendant shall not be countenanced, at any cost and this petition has, necessarily, to be dismissed.

11. In result, this Civil Revision Petition is dismissed, as devoid of merits. This Court is not imposing any costs, but it is made clear that frivolous petitions of this kind, which tend to clock the business of the Courts and depriving serious litigants of having their cases decided, will, in future, attract exemplary costs.

12. Since, the Civil Revision Petition itself is dismissed, the learned District Munsif, Thirumayam is directed to pronounce the judgment in O.S.No.185 of 2010, as expeditiously as possible, preferably within a period of one week from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

The District Munsif Cum Judicial Magistrate, Thirumayam.

Gk

RL/2C/3P/SKN/RSK/SAR1/25/1/2018

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