



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.07.2018

WEB COPY

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P.(MD) (PD) No.1035 of 2014

and

M.P.(MD) No.1 of 2014

Ponmohan Raj

... Petitioner / Petitioner / Respondent / Plaintiff

vs.

Aandaperumal

... Respondent / Respondent / Petitioner / Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records and set aside the order dated 08.01.2014 passed in the application in I.A.No.490 of 2013 in I.A.No.386 of 2013 in O.S.No.632 of 2008 by the learned Additional District Munsif Court, Tenkasi and allow the same.

For Petitioner : Mr.J.Barathan

For Respondent : Mr.T.S.Mohammed Mohideen

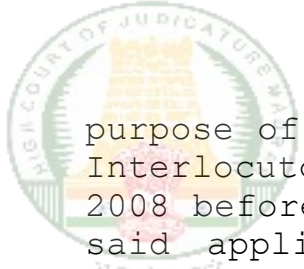
ORDER

This civil revision petition has been filed as against the order passed in I.A.No.490 of 2013 in I.A.No.386 of 2013 in O.S.No.632 of 2008 dated 08.01.2014, by the Additional District Munsif Court, Tenkasi.

2.The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

(i) The revision petitioner filed a suit in O.S.No. 632 of 2008 for partition of his 1/2 share in the suit properties. The second defendant in the suit is the brother of the plaintiff and the first defendant in the suit is the purchaser of the suit property from the second defendant.

(ii) After filing a written statement, the respondent in this civil revision petition, who is the first defendant in the suit, wanted to file an additional written statement. Hence, for the



purpose of receiving the additional written statement, he filed an Interlocutory Application in I.A.No.386 of 2013 in O.S.No.632 of 2008 before the Additional District Munsif Court, Tenkasi. In the said application, the lower Court set the revision petitioner exparte. Aggrieved by the exparte order, the revision petitioner has filed an Interlocutory Application in I.A.No.490 of 2013 to set aside the order setting the revision petitioner exparte. However, the lower Court dismissed the said application.

3.The learned counsel appearing for the revision petitioner submitted that the lower Court has committed an error in dismissing the petition. This Court asked whether the petitioner has any valid objections in permitting the respondent to file the additional written statement. The learned counsel for the petitioner fairly admitted that the respondent can be given an opportunity to file the additional written statement despite his objections on merits.

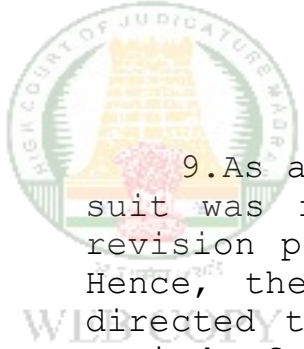
4.The learned counsel appearing for the petitioner though submitted that the revision petitioner filed the application immediately without any delay, to set aside the exparte order setting the revision petitioner exparte and that the lower Court has passed the order without considering the serious prejudice that is likely to be caused to the petitioner, has no valid objections for receiving additional written statement.

5.It is to be seen that the affidavit filed in support of the petition, was signed by the advocate and not by the party concerned, who alone is competent, to speak about the reason as to why he was not present, when the matter was called in Court. Hence, the lower Court is right in dismissing the petition on the ground that the affidavit is not filed by the petitioner but by the counsel.

6.In this case, the main petition in I.A.No.386 of 2013 filed by the respondent to permit him to file the additional written statement. It is seen that the suit itself was filed in the year 2008 and the original written statement was filed in the year 2009. It is admitted that the additional written statement was filed immediately after the commencement of trial.

7.In such circumstances, very rarely this Court can refuse permission to any one of the parties, to file additional pleadings either by way of additional written statement or by way of reply statement.

8.This Court find that the respondent can be permitted to file the additional written statement, having regard to the facts. Since no prejudice is likely to be caused, this Court is not inclined to entertain this civil revision petition.



9.As a result, this Civil Revision Petition is dismissed. The suit was filed in the year 2008 and the pendency of the civil revision petition has caused further delay in disposing the suit. Hence, the learned Additional District Munsif Court, Tenkasi is directed to expedite the trial and dispose of the suit within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-II)

To

The Additional District Munsif,
Tenkasi.

+ 1 CC TO Mr.T.S.MOHAMED MOHIDEEN, Advocate IN SR.No. 72743

MM

BU/MK/RSK/SAR-2 : 18.09.2018 : 3P/3C

C.R.P.(MD) (PD) No.1035 of 2014
13.07.2018