



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 07.02.2018
CORAM :
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD) No.2507 of 2017
and
C.M.P. (MD) No.11785 of 2017

Chellaswamy ... Revision Petitioner / Petitioner / Defendant

vs.

1.Ponnayyan
2.Thankappan
3.Dhasayyan alias Rajaian
4.Palamma
5.Alphonse
6.Rajan
7.Latha
8.Sudha

... Respondents / Respondents / Plaintiffs

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 08.08.2017 passed in I.A.No.124 of 2017 in O.S.No.159 of 2004 on the file of the II Additional District Munsif, Kuzhithurai, Kanyakumari District.

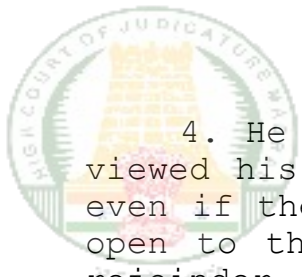
For Petitioner : Mr.R.Nandakumar
For Respondents : Mr.C.Godwin (for cavetor/R2)

ORDER

This Civil Revision Petition has been filed challenging the fair and decreetal order passed by the learned II Additional District Munsif, Kuzhithurai, Kanyakumari District in I.A.No.124 of 2017 in O.S.No.159 of 2004 dated 08.08.2017.

2. The facts of the case are that the respondents herein, as plaintiffs, have filed a suit in O.S.No.159 of 2004, against the petitioner herein/defendant for the relief of permanent injunction and other reliefs. During the course of the proceedings, the petitioner/defendant has filed an interlocutory application in I.A.No.124 of 2017 seeking permission to file additional written statements and as the same is dismissed by the trial Court, the present civil revision petition came to be filed.

3. The learned Counsel for the petitioner/defendant would submit that the respondents/plaintiffs have wrongly impleaded his survey number, so as to grab his property. The petitioner failed to inform these details to his erstwhile Counsel, which are all now averred in the additional written statements.



4. He would further contend that the Court below ought to have viewed his application filed under Order VIII Rule 9 liberally and even if the said interlocutory application is allowed, it is always open to the respondents/plaintiffs to contest the same, by way of rejoinder. In support of his plea, the learned Counsel for the petitioner placed reliance on the judgments reported in (2007) 7 MLJ 444 and 2009 (2) TNCJ 398. Therefore, he prays for allowing the present petition, so as to put forth his case.

5. The learned Counsel for the respondents, on the other hand, stoutly refuted the contentions of the learned Counsel for the petitioner and he would draw the attention of this Court stating that the suit is of the year 2004. The petitioner/defendant has filed the written statements as early as on 20.09.2004 and PW1 was also examined in chief. Having waited for 13 years, the petitioner/defendant has now come with this plea.

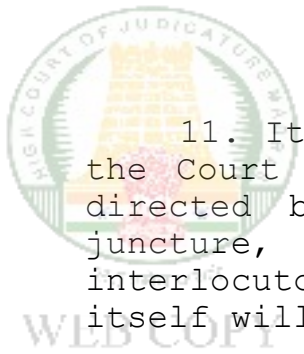
6. He would further submit that though applications filed under Order XIII Rule 9 CPC has to be viewed liberally, it is a settled law that the facts and circumstances of each case have to be viewed on its own merits and in support of his contention, he would place reliance on the judgments reported in 2000 (1) LW 821 and 2015 (3) LW 336. Therefore, he prays for dismissal of the present petition.

7. Heard the learned Counsel appearing on both sides and perused the documents placed on record.

8. It is seen that the suit is of the year 2004 and written statements were filed as early as on 06.02.2004 and the issues were framed on 18.11.2004. PW1 was examined in chief on 09.01.2015. After a lapse of 13 years, the petitioner/defendant has filed the present interlocutory application seeking leave of the Court to file additional written statements.

9. No doubt, applications filed under Order VIII Rule 9 has to be viewed liberally. But, it is the discretion of the Courts to decide the same, based on the facts, circumstances, reasons for not raising the contentions in the earlier rounds, conduct of the parties, stage of litigation, hardship that may be caused to the other side.

10. It is seen that the petitioner/defendant, in the earlier rounds of litigation, has filed C.M.A.No.11 of 2006 before the Sub Court, Kuzhithurai challenging the interim injunction granted in I.A.No.284 of 2004 in O.S.No.159 of 2004. In the said C.M.A., he has filed I.A.No.245 of 2007, to call for correlation register. The said interlocutory application was dismissed, which was confirmed by this Court in C.R.P.(MD)No.2405 of 2008 on 11.04.2014. Without disclosing these facts, the petitioner/defendant has successfully stalled the trial proceedings till 19.12.2014. After receipt of the dismissal order in the said C.R.P., trial has been proceeded with by the Court below.



11. It is also seen that as the case is more than 13 years old, the Court below has given priority to proceed with the trial and directed both the parties to co-operate for disposal. At this juncture, the petitioner/defendant has filed the present interlocutory application, without any sufficient cause, which itself will show that his intention is to drag on the proceedings.

12. Hence, in the considered view of this Court, the order impugned in this petition does not warrant any interference and accordingly, this civil revision petition is dismissed. Though this Court is inclined to impose costs on the petitioner, considering the relationship between the parties, no costs are imposed. The learned II Additional District Munsif, Kuzhithurai, Kanyakumari District is directed to dispose of the main suit itself within a period of three months from the date of receipt of a copy of this order. Both the parties are directed to co-operate for the same. It is made clear that any delay tactics adopted by the parties will be viewed seriously. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The II Additional District Munsif,
Kuzhithurai,
Kanyakumari District.

+1cc to M/S.C.Godwin, Advocate SR.No. 46752
+1cc to M/S.R.Nandakumar, Advocate SR.No. 46963

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and
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gk
JM/JC/SAR 4/21.02.2018/3P/4C