



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.07.2018

CORAM

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

WEB COPY

C.R.P. (MD).Nos. 1730 & 1731 of 2016
and C.M.P. (MD) Nos. 8401 of 2016
and 3421 of 2018

M.V. Senthilkomaran .. Petitioner in both CRPs.

Vs.

Dhandapani .. Respondent in both CRPs.

COMMON PRAYER in C.R.P. (MD).No. 1730 & 1731 of 2016 : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Decreetal Order dated 22.06.2016 in I.A.No.528 of 2015 and 529 of 2015 in O.S. No.11 of 2005 respectively passed by the learned Principal District Munsif, Dindigul.

For Petitioner : Mr. M.P.Senthil in both CRPs.

For Respondent : Mr. S.Anand Chandrasekar for
M/s.Sarvabhauman Associates in both CRPs.

O R D E R

The petitioner has come forward with these Civil Revision Petitions to set aside the Fair and Decreetal Order dated 22.06.2016 in I.A.Nos.528 & 529 of 2015 in O.S. No.11 of 2005 passed by the learned Principal District Munsif, Dindigul.

2. The petitioner is the 3rd plaintiff and the respondent is the 1st defendant in a suit in O.S.No.11 of 2005. The suit in O.S.No.11 of 2005 was initially filed by the plaintiffs-1 & 2 for Specific performance, and during the pendency of the suit the 1st plaintiff was died and therefore the 3rd plaintiff was impleaded as the legalheir of the 1st and 2nd plaintiffs. Thereafter, the 2nd defendant also died and the defendants-3 to 6 were impleaded as the legalheirs of the 2nd defendant. The 1st defendant/respondent herein had filed two interlocutory applications in I.A.Nos.528 & 529 of 2015 in O.S.No.11 of 2005 seeking to reopen the suit and to set aside the exparte order dated 09.02.2015 and both the applications were allowed by the learned Principal District Munsif, Dindigul on condition that the 1st defendant shall pay a sum of Rs.500/-as cost to the 3rd plaintiff. Aggrieved over the same, the revision petitioner/3rd plaintiff has come forward with these Civil Revision



3. Learned counsel for the respondent has contended that the petitions have been filed only to drag on the proceedings and therefore, these Civil Revision Petitions in C.R.P (MD) Nos.1730 & 1731 of 2016 are liable to be dismissed.

WEB COPY

4. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent and perused the material documents available on record.

5. The case of the revision petitioner/3rd plaintiff is that the respondent herein had filed two interlocutory applications in I.A.Nos.589 & 590 of 2010 on earlier occasions for recalling P.W.1, which were dismissed by the learned Principal District Munsif, Dindigul by order dated 24.09.2010. The respondents herein without challenging the said order by straightaway filed yet another interlocutory application in I.A.No.881 of 2012 for reopening the case, in order to adduce his oral and documentary evidence, which was also dismissed on 21.01.2013 and the same was also not challenged by the respondent. Therefore the first defendant/respondent herein has lost his right to examine the plaintiff. Hence, these petitions are liable to be dismissed and the respondents may be permitted to put forth his arguments in the suit in O.S. No.11 of 2005. I find much force in the contention raised by the petitioner in as much as the respondents, having not challenged the earlier order and having allowed to attain finality, cannot now seek to re-open the entire case since the respondent had lost their right on two occasions.

6. In the result,

1. the Civil Revision Petition in C.R.P (MD) No.1730 of 2016 for re-opening is dismissed, by confirming the order dated 22.06.2016 in I.A.No.528 of 2015 in O.S. No.11 of 2005 passed by the learned Principal District Munsif, Dindigul.
2. the Civil Revision Petition in C.R.P.(MD) No.1731 of 2016 filed to set aside the exparte decree is allowed.
3. the order dated 22.06.2016 in I.A.No.529 of 2015 in O.S.No.11 of 2005 is set aside and the trial Court is directed to give an opportunity to the first defendant to complete his evidence and cross examination of the plaintiff within a period of four weeks from the date of receipt of copy of this order.
4. the 1st defendant/respondent herein is directed to put forth his arguments in the suit in O.S.No.11 of 2005 and complete the same, within a period of two weeks from the date of receipt of a copy of this order.
5. after completion of arguments, the learned Principal District Munsif, Dindigul is directed to dispose of the suit in O.S.No.11 of 2005 within a period of four months thereafter.



WEB COPY

C.R.P. (MD) .Nos. 1730 & 1731 of 2016

No costs.
closed.

Consequently, connected Civil Miscellaneous Petitions are

Sd/-

Assistant Registrar (CRL Side)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ksa

To

The Principal District Munsif,
Dindigul.

Copy to:

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 COPIES)

+1. CC to M/S.Sarvabhauman Associates Advocate SR.No.70771 dated
03/07/2018

+1. CC to M/S.M.P.Senthil, Advocate SR.No.70769 dated 03/07/2018

C.R.P. (MD) .Nos.1730 & 1731/2016
02.07.2018

RD(24.03.2022) 3P 6C