

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2019

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(PD) NO.1717 OF 2019

AND

CMP NO.10996 OF 2019

A.Muthusamy

... Petitioner

Vs.

1.M.Anandavel

2.M.Rajavel

3.Vijaya

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 13.02.2019 passed by the learned Subordinate Court, Attur, in I.A.No.375 of 2018 in O.S.No.53 of 2006.

For Petitioner : Mr.L.Mouli

ORDER

The petitioner is the first defendant in the suit. He was set *exparte* on 07.09.2006. The plaintiff and other defendants are the

children of the petitioner. They have filed written statement and participated in the trial. In other words, they were effectively contesting the case between themselves and the matter stands posted for arguments. At that stage, the petitioner has come out with an application to set aside the *ex parte* order and reopen the case. The Trial Court has rightly considered that the petitioner cannot be relegated to old position and since he has deliberately stood aside during the course of trial, he is not entitled to reopen the case and dismissed the petition. Aggrieved over the same, the petitioner is before this Court.

2. As contended by the learned counsel for the petitioner, any reason is a good reason under Order 9 Rule 7 of Civil Procedure Code. But, at the same time, a person who was set *ex parte*, cannot be relegated to old position and cannot seek for retrial of the issues. In that view of the matter, the claim of the petitioner to re-open the trial is not sustainable as rightly found by the Trial Court. The petitioner has not let in any evidence nor marked any documents, but merely filed his written statement. Without there being any evidence, he cannot effectively contest the case. However, he can put forward his legal submissions

before the Court. Therefore, the petitioner can be permitted to make his arguments before the Trial Court.

3. Considering the facts and circumstances of the case, the *exparte* order passed by the Trial Court is set aside only to the extent of permitting the petitioner to make his submissions before the Trial Court. Considering the long pendency of the suit for the past twelve years, a direction is issued to the Trial Court to dispose of the matter within a period of one month from the date of receipt of a copy of this order, within which period, the petitioner, if legally advised, can make his submissions before the Trial Court, which will be considered, while passing the judgment and decree.

4. The Civil Revision Petition is disposed of with the above observations and directions. No costs. Consequently, connected civil miscellaneous petition is closed.

04.06.2019

Index : Yes/No
Internet : Yes/No
TK

M.GOVINDARAJ, J.

TK

To

The Subordinate Judge
Subordinate Court
Attur.



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