

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P (PD).No.2567 of 2014

and

M.P.No.1 of 2014

Chandrasekaran

.. Petitioner

vs

1.Thirugnanasambandam

2.Ponmudi

.. Respondents

**Prayer:** Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Fair and Decretal order dated 11.02.2014 passed in I.A.No.660 of 2012 in O.S.No.162 of 2010 on the file of the Additional Sub-Court, Tiruvannamalai.

For Petitioner : Mr.P.Mani

For Respondents : Ms.Mahamandra Rajalakshmi for  
Mr.K.A.Vimal Kumar

**ORDER**

The petitioner has filed the present Civil Revision Petition against the fair and Decretal Order dated 11.02.2014 made in I.A.No.660 of 2012 in

O.S.No.162 of 2010 passed by the learned Additional Subordinate Judge, Tiruvannamalai.

2. The petitioner is the second defendant in O.S.No.162 of 2010. The suit was filed by the first respondent/plaintiff to partition of the suit schedule property consisting of 29 items. The second respondent herein is the first defendant and the father of the petitioner and the first respondent herein.

3. The petitioner/2<sup>nd</sup> defendant and the 2<sup>nd</sup> respondent/1<sup>st</sup> defendant had already filed their respective written statement. The petitioner/2<sup>nd</sup> defendant had earlier filed I.A.No.529 of 2010 on 16.11.2010. It was allowed on 20.12.2010.

4. It was thereafter the 1<sup>st</sup> respondent/plaintiff filed I.A No 333 of 2011 to amend be plaint in the suit that was filed on 02.12.2008. I.A No 333 of 2011 was allowed by the court on 17.11.2011 pursuant to which the 1<sup>st</sup> respondent/plaintiff herein filed amended copy of the plaint.

5. It is only after the amendment to the plaint, the necessity for filing an additional written statement arose. Thus, the petitioner filed I.A.No.660 of 2012 for filing additional written submission for the 2<sup>nd</sup> time. Therefore, the

conclusion of the court that the petitioner has not satisfactorily explained as to how in spite of due diligence he could not have raised the pleas before the commencement of the trial remains inexplicable inasmuch as the request for filing additional written statement has arisen in view of the amendment to be plaint. For the same reason, the reasoning of the court that the petitioner/2<sup>nd</sup> defendant intention was to create be proceeding cannot be countenanced.

6. In any event, the suit has been filed for partition of the suit properties and therefore it would be appropriate for the court to consider all the pleas of the respective parties before passing the preliminary decree in the above partition suit. All the issues needs to be settled before the trial court forcing the parties to go on appeal.

7. I am therefore of the view that to meet the ends of justice, the order passed by the lower court rejecting the request for receiving additional written statement deserves to be interfered and set aside.

8. The Additional Sub- Court, Thiruvanamali shall take up the suit and dispose the same within a period of nine months from date of receipt of copy of this order.

C.SARAVANAN,J.

kkd/arb

9. The present Civil Revision Petition stands allowed with the above observation. No costs. Consequently, connected Miscellaneous petition is also closed.

30.04.2019

Index: Yes/ No  
Internet : Yes/No  
Speaking/Non-speaking Order  
arb

To

The Additional Sub-Court,  
Tiruvannamalai.

C.R.P (PD).No.2567 of 2014

and

M.P.No.1 of 2014

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