

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2019

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THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP.(PD).Nos.3862 & 3863 of 2017

and

C.M.P.Nos.18025 of 2017 & 5182 of 2019

1.Indira @ Indirani
2.Moorthy
3.Rajavelu

..Petitioners/Defendants 7 to 9
in both CRPs

Vs

1.Lakshmi

..1st Respondent/Plaintiff
in both CRPs

Kalyani (Died)

2.Maran

..2nd Respondent/2nd defendant
in both CRPs

3.Chandra

4.Janarthanan

5.Sivagami

..Respondents 3 to 5/Defendants 4 to 6
in both CRPs

6.Iyyappan

7.Srinivasan

..Respondents 6 & 7/Defendants 10 & 11
in both CRPs

COMMON PRAYER: This Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 20.07.2017 made in I.A.Nos. 474 & 475 of 2017 in O.S.No. 507 of 2006, on the file of the Court of I Additional District Munsif at Puducherry.

For Petitioners : Mr.Perumal

For R1 : Mr.Mohammed Irfan Ali
for Mr.T.S.Baskaran

For R2 to R7 : No appearance

COMMON ORDER

The above Civil Revision Petitions are filed challenging the order passed by the learned First Additional District Munsif, Puducherry, dismissing the applications filed by the defendants 7 to 9 for re-opening and re-calling the plaintiff side evidence for the purpose of continuation of cross examination of PW1 in I.A.No. 474 & 475 of 2017 respectively.

2 The brief facts are as follows:

The first respondent had filed a suit for partition claiming 1/6th share in the suit property and the second defendant has filed written statement opposing the claim. The plaintiff was examined as PW1 and on 01.08.2007, was cross-examined in part and the matter was posted on 07.08.2007 for continuation of cross-examination of PW1. The cross examination had been proceeded and thereafter ultimately on 30.10.2007, the evidence of PW1 was closed and the matter was posted for defendant side evidence as early as on 07.11.2007. Thereafter, in the month of June, 2017 nearly ten years later, the impugned applications have been moved. The reasons that

have been adduced for filing the above petitions is that the second defendant had filed his chief examination as DW1 on 30.11.2010 and matter was adjourned for cross examination of DW1 and his cross examination was completed only on 21.10.2016 and in the meanwhile, the plaintiff has filed the amended plaint on 17.11.2014 and DW1 was cross examined by the plaintiff on 17.03.2017 and the matter was adjourned to 27.03.2017 for further evidence and thereafter, it was posted on 06.04.2017 for arguments. The matter was adjourned finally on 19.06.2017, after the summer vacation and thereafter, the petitions, which is the subject matter of this revision have filed. No reasons have been given, as to why the steps have not been taken except stating that while preparing the arguments it came to light that certain questions had been omitted to be asked. The respondent/plaintiff had opposed the said application, narrating the conduct of the defendants in paragraph Nos.4 and 5, which are as follows:

"4.The Respondent//plaintiff humbly submit that she have examined herself as PW-1 long back and the matter came up for cross examination of PW-1 on and from 11/01/2007 and finally on 01/2/2007. Several adjournment petitions were filed by the petitioner//D-7 to D-9 for adjournment of cross examination of Pw-1. She was cross examined in part and the matter was posted for further cross to 07/8/2007 and the same was coming up for several hearings and finally on

10/10/0007 plaintiff's side was closed and the matter was posted to defendant's side to 30/10/2007 and finally on 04/01/2008 the defendants were set exparte and the defendants filed a petition for setting aside the said exparte order and the said petition was allowed on costs and conditional order was passed that the costs should be paid on or before 12/3/2007 and the defendants did not pay the cost and hence the said petition was dismissed on 12/03/2008 and the suit is posted for consideration.

The Respondent//plaintiff humbly submit before this Hon'ble Court that the defendants were set exparte on 04/01/2008 and the Respondent//plaintiff filed a petition to reopen plaintiffs side and let in additional evidence and filed a petition in I.A.NO:145/2008 for summoning the Registrar, Oulgret Registration Office, Pondicherry for production of the Partition deed of the year 1973 which is presently marked as EXB-15. In the meanwhile the defendants filed a petition in I.A.No:221/2008 to set aside the exparte order and the same was allowed on condition that the defendants have to pay a cost of RS.200/-on or before 12/03/2008 and since the condition imposed by this Hon'ble Court was not complied and the said petition was dismissed and posted the matter on 14/03/2008 for Judgment. The Respondent//plaintiff humbly submit that the defendants instead filing petition for setting aside the exparte order again they have chosen to file a petition to Review order passed on 12/03/2008 and they have also filed another petition in I.A.No:4/2009 for amendment of Prayer and Provision of Law in the

Review petition and finally both the petitions were dismissed as Withdrawn and two petitions in I.A.No 1446/2009 ND I.A.No 1447/209 were filed to set aside the exparte order and the same were allowed on cost of Rs.1000/- and finally the matter was posted to 10/12/2009 for defendant's side. Nearly 457 days delay has occurred and the defendants were successful in dragging the matter."

3 Therefore, the plaintiff would submit that the applications are nothing but an attempt to protract the proceedings. By an order dated 20.07.2017, the learned Additional District Munsif, Poducherry was pleased to dismiss the said application and challenging the same revision petitioners are before this Court.

4 Heard the counsel on either side.

5 From a perusal of the counter with the narrative of the dates would clearly indicate that the defendants have stalled the proceedings and this Court cannot be a party to the same. The learned Judge has extracted the said reason in his order and stated that several adjournments had been given to the defendants and the present petitions had been filed ten years after the evidence of the PW1 has been closed. It is also seen that the affidavit which has filed in support of the petitions are totally bereft of any reasons for the

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delay. In these circumstances, this Court do not find any infirmity in the order passed by the learned I Additional District Munsif Court, Puducherry.

6 In the result, these Civil Revision Petitions stands dismissed and order passed in I.A.Nos. 474 & 475 of 2017 in O.S.No. 507 of 2006, on the file of the Court of I Additional District Munsif at Puducherry, dated 20.07.2017 stands confirmed. No costs. Consequently, connected miscellaneous petitions are also closed.

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Index: Yes/No
 Internet: Yes/No
 Speaking order / Non-speaking order

To

The Court of I Additional District Munsif,
 Puducherry.

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