

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (PD) No.2563 of 2018
and CMP No.15477 of 2018

1. T.S.Natarajan

2. T.P.Kandasamy Mudaliar

.. Petitioners

Vs.

Anbumani

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and final order dated 13.06.2018 in I.A.No.90 of 2018 in O.S.No.281 of 2006 on the file of Principal District Munsif Court, Tiruchengode.

For Petitioners : Mr.S.Kaithamalai Kumaran

For Respondent : No appearance

WEB COPY

ORDER

This matter is taken up for hearing through Video-Conferencing.

Though served the respondent is not appearing either in person or through counsel duly instructed.

2. The petitioners, who are the defendants 3 and 4 in OS No.281 of 2006 are on Revision, aggrieved by the rejection of their application to reopen their evidence for examining one more witness and mark some documents.

3. The suit is one for declaration of title and injunction. It is seen from the order of the Trial Court that D.W.1 was examined and also cross-examined at length and the suit was subsequently adjourned to 04.01.2018 and 09.01.2018. On 09.01.2018, since there was no representation, the evidence of the defendants was closed. Almost immediately, the present application was filed seeking to reopen the evidence to examine further witnesses. This application was dismissed by the Trial Court on the ground that there was no representation for the defendants on 09.01.2018 and the averments in the affidavit are not proved.

4. I have heard Mr.S.Kaithamalai Kumaran, learned counsel appearing for the petitioners.

5. Mr.S.Kaithamalai Kumaran, learned counsel appearing for the petitioners would vehemently contend that the Trial Court was not right in dismissing the application thereby denying an opportunity of letting in evidence. As could be seen from the order of the learned Trial Judge, the suit was adjourned for defendants' evidence for only two occasions. It is not as if the defendants were attempting to drag on the proceedings. There was no appearance for the defendants only on 09.01.2018 and on that day the evidence was closed. There is nothing to doubt the correctness of the statement made in the affidavit that the first petitioner was not well and he was admitted in the hospital.

6. I therefore, find that the order of the Trial Court dismissing the application would deprive the defendants of an opportunity to lead the evidence. I find that it is the Trial Court has adopted a very strict and pedantic approach in the matter of reopening the evidence of the defendants. I have no doubt in my mind that if the order is up held it will occasion failure of justice.

7. Hence the Civil Revision Petition is **allowed**. The order of the learned Principal District Munsif, Tiruchengode made in IA No.90 of 2018 is set aside. The defendants evidence shall be completed within a period of two months from the date of resumption of physical hearing in the Courts at Tiruchengode. No costs. Consequently, the connected miscellaneous petition is closed.

20.08.2020

jv

Index: Yes/No
Speaking order/ Non speaking order

To

- 1 The Principal District Munsif, Tiruchengode.
2. The Section Officer, V.R.Section,
High Court of Madras.

WEB COPY

C.R.P. (PD) No.2563 of 2018
CMP No.15477 of 2018

R.SUBRAMANIAN, J.

jv



C.R.P. (PD) No.2563 of 2018
and CMP No.15477 of 2018

WEB COPY

20.08.2020