

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 16.02.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. (PD) No.217 of 2021
and
C.M.P.No.2037 of 2021

1.A.N.Selvamani
2.Pappayal @ Pappammal

...Petitioners/
Petitioners/Defendant

Vs

V.N.Nallasamy

...Respondent/
Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and final order dated 05.11.2020 in I.A.No.1 of 2020 in O.S.No.182 of 2014 on the file of the District Munsif, Gobichettipalayam.

For Petitioners: Mr.K.Sudhakar

O R D E R

This Civil Revision Petition has been filed by the petitioners against the order of the learned District Munsif, Gobichettipalayam dated 05.11.2020 made in I.A.No.1 of 2020 in O.S.No.189 of 2014 in and by which, the application filed by the petitioners herein under Order 18 Rule 17 R/w 151 CPC seeking to recall P.W.1 for cross examination, came to be dismissed.

2. The Petitioners are the defendants in the above suit. The respondent/plaintiff herein has filed the above suit for declaration to declare the gift deed dated 12.11.2012 as null and void and not binding on the respondent/plaintiff and also sought for permanent injunction. In the said suit, the trial was commenced and P.W.1 was cross examined in chief and the suit was adjourned for cross examination of P.W.1 on 10.02.2020. However, on the said date (i.e.,) 10.02.2020, when the case was taken up, there was no representation on behalf of the defendants and they have not taken any initiative to cross examine P.W.1. In such circumstances, the Court below closed the evidence after the delay of 30 days. The petitioners/defendants came forward with

the Interlocutory Application seeking to recall P.W.1 for cross examination. According to the petitioners, the first petitioner/first defendant became bodily ill due to severe stomach ache (diarrhea) on 10.02.2020 and on which date, the case was posted for cross examination of P.W.1. Therefore, the first petitioner/first defendant was unable to appear before the Court or even to contact her counsel to give instructions for cross examination of P.W.1. According to the petitioners/defendants, their absence on 10.02.2020 was neither willful nor wanton and the delay is only 30 days and requests to permit them to cross examine P.W.1 and if not done so, The suit would get automatically decreed.

3. On consideration of entire materials of pleadings put forth by the rival parties, the Court below without accepting the plea of the petitioners came to the conclusion that there was no bonafide on the part of the petitioners and they have not taken proper initiative steps to cross examine P.W.1, despite sufficient opportunity was given to them. While holding so, the Court below rejected the application hence, this petition.

4. On a perusal of the entire materials and pleadings and submissions made by the learned counsel for the petitioners, this Court found that the petitioners are evincing most interest to contest the suit and they have filed written statement by engaging their counsel and in fact, they also cross examined P.W.2. According to the first petitioner, when the suit was posted on 10.02.2020, she was unable to even move, since she was severely suffering from Stomach Ache and Diarrhea and in such circumstances, she could not appear before the Court. The Court below rejected the plea of the petitioners on the ground that to prove her illness, the first petitioner has not produced any medical certificate in this regard.

5. The learned counsel for the petitioner, at this juncture, would submit that all of a sudden, the first petitioner suffered severe stomach ache and there was no scope for her to contact a Medical Officer and to get certificate.

6. It is pertinent to note that the petitioners are showing much interest to defend the suit and they filed the written statement in the year of 2014 itself. However, the respondent/plaintiff had taken more than three years in filing the proof affidavit. It is a well settled law that a fair opportunity should always be given to the parties, who are defending the suit. Otherwise their valuable rights and interest would be prejudiced and the Court below should not harp in order to render the ends of justice.

7. In the instant case, the delay is only 30 days and this

Court, in order to give a fair opportunity to the petitioners to defend their suit, is inclined to set aside the order of the Court below.

8. For the foregoing reason, this Civil Revision Petition is allowed and the order passed by the learned District Munsif, Gobichettipalayam in I.A.No.1 of 2020 in O.S.No.182 of 2014 dated 05.11.2020 is hereby set aside. Since the suit is of the year 2014, the trial Court is directed to expedite the same and dispose it at the earliest. No costs. Consequently, connected Civil Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbn
To
The District Munsif Court,
Gobichettipalayam.

+1 cc to M/s.V.P.K.Gowtham, Advocate Sr.No. 9456

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AAB (CO)
RMP (17/03/2021)

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