

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1343 of 2016
& C.M.P.No.7556 of 2016

1.Subramani
2.Sankar
3.Jothi

.. Petitioners

Vs.

1.Suseela Ammal
2.Vitalnathan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 26.02.2016 made in I.A.No.33 of 2016 in O.S.No.52 of 2012 on the file of the Principal Sub Court, Cuddalore.

For Petitioners

: Mrs.G.Sumitra
for Mr.I.Abrar Md. Abdullah

For R1

: No appearance

For R2 : Given up vide Court dated
28.04.2016

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

Civil Revision Petition is filed against the fair and decretal order dated 26.02.2016 made in I.A.No.33 of 2016 in O.S.No.52 of 2012 on the file of the Principal Sub Court, Cuddalore.

2.The petitioners are the defendants 1, 3 and 4, 1st respondent is the plaintiff and 2nd respondent is the 2nd defendant in O.S.No.52 of 2012 (earlier O.S.No.364 of 2003 on the file of the District Munsif Court, Cuddalore). The 1st respondent filed the said suit for declaration, delivery of possession and damages against the petitioners and the 2nd respondent. The petitioners 2 and 3 and the 2nd respondent adopted written statement filed by the 1st petitioner on 21.01.2004 and are contesting the suit. The trial commenced, the parties let in evidence and closed their side. The

suit was posted for arguments. At that stage, the 1st respondent filed I.A.No.33 of 2016 under Section 151 of C.P.C. to re-open the suit for examining the Sub-Registrar, Kullanchavadi, 5th defendant in the suit.

2(i).According to the 1st respondent, it is necessary to examine the Sub-Registrar, Kullanchavadi, to mark certain documents. The petitioners and the 2nd respondent filed counter affidavit and opposed the said application. According to the petitioners, the evidence of the 1st respondent/plaintiff was closed on 17.03.2010. The 1st respondent filed the applications for amendment and for getting expert's opinion on Ex.B1 and adopted to protract the proceedings. Again when the suit was posted for arguments on 06.10.2015, after taking several adjournments, the 1st respondent filed two applications for re-opening the petitioners' side evidence and re-call D.W.4. The said applications were allowed on terms. D.W.4 was cross-examined in part and the 1st respondent has taken number of adjournments for continuation of cross-examination of D.W.4. Again the suit was posted for arguments. At that time, the 1st respondent

filed the present I.A. to re-open her evidence, which was closed on 17.03.2010. The application filed by the 1st respondent is only to delay the proceedings and prayed for dismissal of the I.A.

3.The learned Judge considering the averments made in the affidavit and counter affidavit, allowed the I.A. on the ground that no prejudice will be caused to the petitioners and the 2nd respondent and also in order to give opportunity to the 1st respondent.

4.Against the said fair and decretal order dated 26.02.2016 made in I.A.No.33 of 2016 in O.S.No.52 of 2012, the petitioners have come out with the present Civil Revision Petition.

5.The learned counsel appearing for the petitioners contended that the learned Judge having observed that the 1st respondent has taken several adjournments, erred in allowing the application. The learned Judge failed to consider the fact that the evidence of the 1st respondent

was closed as early as on 17.03.2010 and when the suit was posted for arguments, two applications filed by the 1st respondent earlier for re-opening the petitioners' side evidence and for re-calling D.W.4 were allowed. The 1st respondent has come out with the present application only with a view to protract the suit proceedings. The 1st respondent has not given any details as to what are the documents sought to be marked through the 5th defendant, Sub-Registrar, Kullanchavadi. The learned Judge erroneously allowed the I.A. holding that no prejudice will be caused to the petitioners and prayed for allowing this Civil Revision Petition.

6. When the matter was called on 05.08.2021, there was no representation for the 1st respondent either in person or through counsel. Today also, there is no representation for the 1st respondent. The 2nd respondent was given up by the order of this Court dated 28.04.2016.

7. Upon notice, the 1st respondent filed counter affidavit in the Civil Revision Petition and submitted that in order to prove the case of the 1st

respondent, it is necessary to examine the 5th defendant, Sub-Registrar, Kullanchavadi and to mark certain documents through him. D.W.4 filed additional proof affidavit and marked Exs.B11 to B13. D.W.4 claimed that Exs.B2 and B3 are certified copies of the sale deeds registered in the Sub-Registrar's Office, Kullanchavadi. But the 4th defendant did not take any steps to examine the 5th defendant, the Sub-Registrar, Kullanchavadi. Hence, the 1st respondent filed the present I.A. The learned Judge considering the materials on record, allowed the I.A. There is no need to interfere with the order of the learned Judge and prayed for dismissal of this Civil Revision Petition.

8. Heard the learned counsel appearing for the petitioners and perused the materials on record.

9. From the materials on record, it is seen that the 1st respondent filed the suit O.S.No.364 of 2003 on 18.08.2003 for declaration, delivery of possession and for damages against the petitioners and the 2nd

respondent. The petitioners and the 2nd respondent are contesting the suit by filing the written statement. The trial commenced. The 1st respondent let in evidence and evidence on her behalf was closed on 17.03.2010. After closing of evidence of the petitioners, the suit was posted for arguments on 06.10.2015. After taking several adjournments for arguments, the 1st respondent filed two applications in I.A.Nos.193 and 194 of 2015 to re-open the petitioners' side evidence and to re-call D.W.4 for further cross-examination of D.W.4. The said applications were allowed on terms. At that time itself, the 1st respondent ought to have filed applications for re-opening the evidence of the 1st respondent and let in further evidence by marking documents and examining the Sub-Registrar, Kullanchavadi, the 5th defendant in the suit. After re-calling D.W.4 and after cross-examination of D.W.4, when the suit was posted for arguments, again the 1st respondent has filed the present application. The 1st respondent in the affidavit has stated that she has to mark certain documents and hence, it is necessary to examine the 5th defendant, Sub-Registrar, Kullanchavadi. The 1st respondent has not

given any reason for not filing this application earlier. As rightly pointed out by the learned counsel for the petitioners that the 1st respondent has not given any particulars of the documents sought to be marked through the Sub-Registrar, Kullanchavadi, except stating certain documents to be marked.

10. Further, the 1st respondent in the counter affidavit filed in this Civil Revision Petition, has stated that the 4th defendant claimed that Exs.B2 and B3 are certified copies of the sale deeds registered in the office of the 5th defendant. The 1st respondent has not stated these averments in the affidavit filed in support of I.A.No.33 of 2016 before the Trial Court. The 1st respondent has come out with new reason by filing counter affidavit in the present Civil Revision Petition. The 1st respondent cannot raise these averments in the Civil Revision Petition, when it was not raised before the Trial Court. The learned Judge failed to see that the 1st respondent filed second application for re-opening the evidence, when the suit was posted for arguments. The learned Judge

failed to consider the delay in filing the application and also the contention of the petitioners that the present application filed is only to protract the proceedings. The learned Judge without properly appreciating all the above materials, for erroneous reason allowed the application. In view of the erroneous order of the learned Judge, the impugned order dated 26.02.2016 is liable to be set aside and is hereby set aside.

11.In the result, the Civil Revision Petition stands allowed. As the suit is of the year 2003, the learned Principal Subordinate Judge, Cuddalore, is directed to dispose of the suit in O.S.No.52 of 2012 (earlier O.S.No.364 of 2003 on the file of the District Munsif Court, Cuddalore) as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index :Yes/No

Internet :Yes/No

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V.M.VELUMANI, J.
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To

The Principal Subordinate Judge
Cuddalore.



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