

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.07.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.1524 of 2016

and

C.M.P.No.8307 of 2016

A.Basheer

... Petitioner

Vs.

Sirkali Municipality
Rep. by its Commissioner
Kamarajar Veethi
Sirkali Town,
Nagapattinam.

... Respondent

PRAYER : The Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and final order of the Additional Sub Court, Mayiladuturai, dated 09.03.2016 made in I.A.No.7/2016 in A.S.No.59/2013.

For Petitioner : Mr.S.Sounthar

For Respondent : Mr.P.Srinivas

ORDER

(Heard through video conferencing)

This Civil Revision Petition has been filed by the petitioner, challenging the order of the learned Additional Judge, Mayiladuturai, dated 09.03.2016 made in I.A.No.7/2016 in A.S.No.59/2013.

2. The petitioner herein is the plaintiff and the respondent is the defendant in the original suit in O.S.No.51 of 2009 filed before the District Munsif Court, Sirkali, for the relief of declaration and injunction. The said suit was decreed in favour of the plaintiff. Challenging the judgment and decree dated 30.08.2013, the respondent/defendant preferred an appeal in A.S.No.59 of 2013 before the Additional Sub Court of Mayiladudurai. While the appeal was pending, it appears that the respondent / defendant has moved an Interlocutory Application in I.A.No.7/2016 under Order 41 Rule 27 of CPC, to recall DW1 for recording additional evidence. By an order dated 9.3.2016 the application was allowed by the First Appellate Court. Challenging the same the petitioner/plaintiff has come forward with the present Civil Revision Petition.

3. The submissions made by both side counsels heard.

4. The learned counsel for the petitioner submitted that the First Appellate Court has been repeatedly allowing the defendant to let in additional evidence and the issue about receiving additional documents as evidence should be decided along with appeal and that the petitioner have produced the additional documents just to just to fill up the lacunae and to condone their own negligence. By making use of the order of the Appellate court DW1 was recalled and filed additional documents. Since the petition

to receive additional documents was not decided along with the appeal, the petitioner lost the opportunity to raise objection to receive the additional documents.

5. These contentions now put forth by the learned counsel for the petitioner can be raised by him during the hearing of the first appeal itself. And the appeal need not be kept pending in view of this proceedings pending here. Hence I opt to leave all the factual and legal contentions now raised by the parties left open to be raised before the First Appellate Court itself during the hearing of the first Appeal.

Accordingly, the Civil Revision Petition is disposed off and all the questions of facts and law raised in this proceedings left open to be raised before the First Appellate Court in the Appeal itself. Taking into consideration the long pendency of the matter, the learned Additional Sub-Judge, Mayiladudurai is directed to expedite the hearing and dispose off the Appeal at the earliest. No costs. Consequently, connected civil miscellaneous petition in C.M.P.No.8307 of 2016, is also closed.

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

R.N.MANJULA, J.,

jrs

To

1. The Additional Sub Court, Myladudurai.

2.The Section Officer,
V.R.Section,
High Court, Madras.



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