

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P. (NPD) No.2127 of 2020
and
C.M.P.No.13489 of 2020

Padmanabhan

.. Petitioner/Appellant/Petitioner/Defendant

Vs

R.Rajeswari

.. Respondent/Respondent/Respondent/Plaintiff

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the decree and judgment made in C.M.A.No.3 of 2018 dated 03.03.2020 on the file of Principal Subordinate Court, Salem confirming the fair and decretal order in I.A.No.1321 of 2015 in O.S.No.683 of 2009 dated 11.01.2018 of the file of Principal District Munsif Court, Salem.

For Petitioner

.. Ms.B.Raji

For Respondent

.. Ms.Zeenath Begum

WEB COPY

ORDER

This Revision Petition has been filed questioning the order dated 03.03.2020 in C.M.A.No.3 of 2018. The said Civil Miscellaneous Appeal was filed questioning the order in I.A.No.1321 of 2015 in O.S.No.683 of 2009 which was pending on the file of the Principal District Munsif, Salem.

2.The revision petitioner herein / appellant in CMA / petitioner in I.A.No.1321 of 2015 was the defendant in O.S.No.683 of 2009. That suit had been filed seeking eviction. The present petitioner / defendant had been residing in the suit property for over the period of 25 years.

3.The said suit had a very very long innings particularly at the stage of cross-examination of PW-1. A perusal of the order now under question would show the extreme frustration which the learned Principal District Munsif, Salem should have been put to by the acts of avoiding the Court proceedings by the revision petitioner herein. He had simply refused to go to Court. He refused to participate in the judicial proceedings. He sought adjournments after adjournments without taking any steps to cross-examine PW-1.

4.The anguish of the learned Principal District Munsif, Salem can be visualized from the dates which he had given. The suit, as stated, was filed seeking eviction. Written statement was also filed. Thereafter, issues were settled. PW-1 was examined in chief for the first time on 10.01.2011. Thereafter, adjournments were sought for cross-examination of PW-1 and the revision petitioner herein had not come forward to cross-examine PW-1 even though nearly about 20 to 30 adjournments had been granted spanning over five to six years.

5.First he did not cross-examine PW-1 and an application was filed under Order XXVI Rule 9 of CPC for appointment of an Advocate Commissioner. That application was dismissed. Thereafter, again it was posted for cross-examination of PW-1. He was set exparte and an exparte decree was passed on 05.04.2011. An application was filed seeking to set aside the exparte decree and that was allowed on 03.01.2012. Thereafter, it was again posted for cross-examination till 20.12.2013. He had questioned the order of dismissing the application seeking appointment of Advocate Commissioner in C.R.P.(PD).No.3161 of 2014. It was dismissed on 28.08.2014 and the learned Judge also extracted the relevant portion of the said order and noted the anguish of the learned Principal District Munsif Salem.

6. Thereafter, again the revision petitioner filed an application to reject the plaint, which was also dismissed. Thereafter, he had filed another application to reject the plaint under Order VII Rule 11 of CPC. That was also dismissed. Thereafter he had filed an application under Order I Rule 10 of CPC seeking to implead one Nagarajan as a party to the suit. That application was also dismissed.

7. Finally, since the petitioner had not cross-examined PW-1 and PW-2 and had also not come forward to adduce evidence, on 20.10.2014, the Trial Court had set the petitioner exparte and on 28.10.2014 passed exparte decree.

8. The application in I.A.No.1321 of 2015 was filed seeking to set aside the exparte decree. The Principal District Munsif, Salem had, in my opinion correctly dismissed the said application.

9. C.M.A.No.3 of 2018 was filed, which came up for consideration before the Principal Subordinate Judge, Salem and by an order dated 03.03.2020, the Civil Miscellaneous Appeal was also dismissed.

10. Again I must concur with the reasons and the nature of order passed. It is a very detailed order. As a matter of fact, it can be taken that the Court literally begged the revision petitioner to come forward to cross-examine PW-1. The Court just felt short of going to the residence

of the petitioner along with PW-1 requesting him to cross-examine PW-1 sparing him the trouble of coming to court. The string of dates shows the conduct of the petitioner in refusing to participate in the judicial proceedings. When the petitioner has such a attitude, there is no wonder that both the Courts below had rejected the application and the plea to set aside the exparte decree.

11.It had been noted in the order of the Appellate Court that the respondent herein would be more than 80 years as on date of passing of the order in Civil Miscellaneous Appeal. He should have crossed 80 years by now.

12.The Civil Revision Petition is dismissed with costs of Rs.25,000/- (Rupees Twenty Five Thousand only) payable to the respondent and if not paid to be sought in Execution Proceedings.

27.04.2021

Internet: Yes/No
Index: Yes/No
smv

To
The Principal Subordinate Court,
Salem.

WEB COPY

C.V.KARTHIKEYAN,J.

smv



C.R.P.(NPD) No.2127 of 2020

WEB COPY

27.04.2021