



C.R.P.(NPD).Nos.1057 & 1058 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2022

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).Nos.1057 & 1058 of 2022

Dhanalakshmi

...Petitioner/ Petitioner/ Plaintiff

-Vs-

- 1.Sivaraj
- 2.Velusamy
- 3.Aranganayagam
- 4.Chinnasamy
- 5.Karuppatthal
- 6.Eswaran
- 7.Mylatthal
- 8.Vellaitthai
- 9.Eswaran
- 10.Deivatthal
- 11.Manogaran
- 12.Sivagami

...Respondents 1 to 12/ Respondents 1 to 12 / Defendants 1 to 12



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Prayer in CRP No.1057: Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 03.03.2022 made in I.A.No.34 of 2022 in O.S.No.104 of 2008 on the file of the District Munsif, Dharapuram by allowing this Civil Revision Petition and thus render justice.

Prayer in CRP No.1058: Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 03.03.2022 made in I.A.No.35 of 2022 in O.S.No.104 of 2008 on the file of the Principal Subordinate Judge, Chengalpattu, Kancheepuram District.

For Petitioner : Mr.R.Prabakar

COMMON ORDER

Challenging the dismissal of her application to reopen the case of the defendant, the petitioner/plaintiff is before this Court. The facts, in brief, are as follows:



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2. The revision petitioner had filed a suit for a declaration and mandatory injunction in respect of the suit properties against the respondents herein. The case of the petitioner is that on account of high blood pressure and diabetes, she was unable to move anywhere from 12.01.2021 and in the light of the Corona pandemic, she had been medically advised not to venture out. In these circumstances, she was unable to contact her counsel. When the petitioner had met her counsel after she had recovered, she came to know that D.W.1 to D.W.4 have been examined and the cross examination of the witnesses were closed due to the absence of the petitioner. The cross-examination of these witnesses are essential and therefore she prayed to reopen the case.

3. Respondents 2 and 7 had denied the averments contained in the affidavit and submitted that valid reasons have not been given by the petitioner in her affidavit. Further, no documents supporting her averments has been produced by the petitioner. The suit has been pending for the last 14 years. The respondents have already submitted their arguments before the Court after completion of their evidence. It is only when the matter was



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posted for judgment on 24.01.2022, the present petition has been filed by the petitioner to protract the proceedings of the case, the same therefore deserves to be dismissed.

4. The respondents 5, 6, 8, 9 & 11 have filed their counter inter alia contending that the suit is of the year 2008 and was posted for the cross examination of the plaintiff side witness on 12.08.2016 and the matter was being adjourned on several occasion for further evidence on the side of the petitioner. The petitioner did not come forward to produce any evidence or cross examine the witnesses produced on the side of the defendants. In the meanwhile defendants 3, 10 and 14 had died and steps have not been taken to bring on record their legal representatives. They would contend that the petitioner was watching the proceedings and this application is nothing but a means of protracting the proceedings.

5. The learned District Munsif before whom this application in I.A.No.34 of 2022 in O.S.No.104 of 2008 was pending had passed order dismissing the said petition. The learned Judge had extracted at length the



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conduct of the plaintiff from 23.06.2017 when the matter was posted for petitioner's further evidence and when the evidence was closed. Aggrieved by this order, the revision petitioner is before this Court.

6. It is the contention of the learned counsel for the petitioner that it was only on account of the pandemic that the petitioner was unable to attend the Court and further she must be given an opportunity as a vital right of the plaintiff was being denied.

7. Heard the learned counsel.

8. The order of the learned District Munsif, Dharapuram which has not been controverted by the petitioner would show that the suit for a declaration and mandatory injunction had been filed by the revision petitioner on 17.03.2008, then the matter was posted for cross examination of plaintiff on 12.08.2016. The petitioner has not come forward to produce any evidence or submit herself for cross examination. Ultimately on 23.06.2017 since the petitioner had not produced any further evidence on



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her side, her evidence was closed. The matter was then adjourned for the defendants side evidence.

9. The applicant filed an application for reopening the case and the petitioner had produced another witness P.W.2 on her side. The cross examination of P.W.2 was closed on 26.04.2018 and from 26.04.2018 the matter was being adjourned for further evidence on the side of the plaintiff. Since the petitioner had not come forward to produce further witnesses, the evidence on the side of the petitioner was closed on 03.04.2019. Once again from 07.06.2019 till the date of the filing of this impugned application in 2022 no further evidence was produced by the petitioner. Ultimately, the evidence was closed and defendants side evidence was opened. D.W.1 was examined on 11.12.2020 in chief and thereafter was posted for cross examination till 22.03.2021. Since the petitioner did not come forward to cross examine D.W.1, the cross examination was closed on 22.03.2021. In the meanwhile the 3rd defendant had died and the matter was listed for bringing on records the legal representatives of the deceased 3rd defendant. This was hanging fire from



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19.07.2021 to 13.08.2021. On 13.08.2021, the suit was dismissed as abated against the 3rd defendant. On 02.09.2021, D.W.2 was examined and he was not further cross examined and his evidence was closed on 23.09.2021. Meanwhile, since no steps were taken for bringing on record the legal representative of the 14th defendant who had died, the suit was dismissed as abated as against the 14th defendant.

10. D.W.3 and D.W.4 were examined on 01.11.2021 and their cross examination was also closed in the light of no representation on the side of the petitioner. Similarly, cross examination of D.W.5 was closed on 11.11.2021. From 19.11.2021 to 21.12.2021 the case was kept aside for arguments. During these hearings also the petitioner had not come forward to proceed with the case. The suit was thereupon listed for ex parte judgment on 03.04.2019. It is at this juncture that the impugned petition has been moved. The conduct of the petitioner throughout the proceedings indicates an indifferent attitude to proceed with the case. The intent appears to keep the litigation alive. This conduct has definitely prejudiced the defendants/respondents.



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WEB COPY 11. Therefore in the light of the above conduct of the petitioner which shows her apathy to the Court proceedings, I see no reason to set aside the order passed by the District Munsif, Dharapuram and consequently, the above Civil Revision Petition stands dismissed. No costs.

30.03.2022

Index : Yes/No
Internet: Yes/No
shr

To

1. The District Munsif, Dharapuram.
2. The Principal Subordinate Judge, Chengalpattu,
Kancheepuram District.



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P.T. ASHA, J.
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