



C.R.P(PD)No.2745 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2022

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Civil Revision Petition (PD) No.2745 of 2016

Shrine Basilica of
Our Lady of Health Vailankanni,
Rep by its Rector,
Veilankanni,
Keelvelur Taluk,
Nagapattinam.

... Petitioner

Vs.

Dakshinamoorthy

... Respondent

This Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside order and decree passed in I.A.No.232 of 2016 in O.S.No.113 of 2010 dated 06.07.2016 on the file of District Munsif Court, Nagapatinam.

For Petitioner : Mr.M.S.Palaniswamy
For Respondent : No Appearance



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ORDER

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The present Civil Revision Petition has been filed by the petitioner/plaintiff challenging the order passed by the District Munsif Court, Nagapatinam in I.A.No.232 of 2016 in O.S.No.113 of 2010 dated 06.07.2016.

2. The petitioner/plaintiff filed a suit in O.S.No.113 of 2010 against the respondent/defendant for declaration of eastmentary rights and permanent injunction, restraining the respondent and others from putting up any constructions in the property.

3. The Learned counsel for the petitioner/plaintiff contended that in this case, the trial has commenced as early as 2014 and the plaintiff's side witness was cross examined on two occasions i.e., 21.04.2014 and 03.06.2014 and the evidence on his side was closed on 10.06.2014. Subsequently, an application was filed by the respondent/defendant under Order XVIII Rule 17 to recall PW1 for cross examination after a delay of 21 months.



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4. He further contended that the petition is bereft of details and no valid or sufficient reason is given for filing the same. The Rector, who has given the evidence, has been transferred and the present Rector who is in charge of the administration is ready to adduce evidence if necessary.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. It can be seen from the affidavit filed in support of the application by the respondent/defendant that the reason for recalling PW1 is that, certain facts regarding the damage of his shop by the men and agents of the plaintiff; the pending Police complaint in this regard; and the related documents were omitted on his side during the cross examination of PW1. Hence, he has filed the application under Order XVIII Rule 17 of the Civil Procedure Code to recall and reopen PW1 by way of cross examination. However, the plaintiff side evidence was closed as early as 10.06.2014 and this application to



reopen and recall the PW1 was filed only in the month of March 2016 which is after a delay of 21 months.

7. For better appreciation the Order XVIII, Rule 17 of the Civil Procedure Code is extracted hereunder:

“17. Court may recall and examine witness.- The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.”

8. In this case, the questions which the respondent is going to ask the PW1 by way of cross examination has no relevance to decide the suit which is filed for easementary rights. Hence this Court is of the view that there is no necessity to recall and reopen and examine PW1 as per Order XVIII, Rule 17 of the Civil Procedure Code.



9. Moreover, no documents available in support of the above facts filed along with this application by the respondent/defendant, which he wants to rely for cross examination and the same is mentioned in the Affidavit. The respondent/defendant is well aware of the fact that the Rector who deposed/adduced evidence on behalf of the plaintiff has already been transferred.

10. There is no mention of the Criminal Case number and the Court in which it is pending. Even in the order of the trial Court, it is mentioned as two cases Judicial Magistrate I Court and not the case numbers. The filing of the above application is only to delay/protract the proceedings and to harass the petitioner/plaintiff and nothing else.

11. Considering the facts and circumstances of the case and for the foregoing reasons, the order passed by the learned District Munsif, Nagapattinam in I.A.No.232 of 2016 in O.S.No.113 of 2010 is liable to be set aside and the same is set aside. Accordingly, the Civil Revision Petition stands allowed. Consequently, connected C.M.P.No.14098 of 2016 is closed. No costs.



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12. Since, the suit is of the year 2010, the trial Court is hereby directed to dispose of the suit as expeditiously as possible, preferably within a period of six (6) months from the date of receipt of a copy of the order.

24.02.2022

Index : Yes/No
Speaking or Non Speaking
vm

J.SATHYA NARAYANA PRASAD,J.

vm

To:
The District Munsif Court,
Nagapattinam.

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