



C.R.P. No.3565 of 2017

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T.V.THAMILSELVI, J.

This matter was taken up for hearing under the caption “For Being Mentioned” today at the instance of the learned counsel for the petitioner.

2. The learned counsel for petitioner would submit that this Court by an order dated 19.10.2022 allowed the above C.R.P. and also issued direction. However, he would submit that in para 6 of the order, instead of mentioning dismissal of C.R.P., it was mentioned as allowed. Hence, he prayed to modify the contentions in para 6 of the order. Accordingly, the matter is listed today.

3. Heard the contentions of learned counsel for petitioner and perused the order.

4. Considering his submissions, the para 6 of the order shall be substituted as follows:

In Para 6 at Page 5

“6. In the result, the Civil Revision Petition is dismissed and the order passed by the trial judge in I.A.No.308 of 2016 is confirmed. However, since the suit is pending from the year of 2011, the trial court is directed to proceed with the case and to dispose the same after giving opportunity to both parties within



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a period of three months from the date of receipt of copy of this order. The defendant is directed to cooperate with the trial proceedings. No costs. Consequently, connected Civil Miscellaneous Petition is closed. ”

5. Registry is directed to incorporate above correction in the Order of this Court in C.R.P.No.3565 of 2017 dated 19.10.2022 and issue fresh order copy to the petitioner.

13.02.2023

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13.02.2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS



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DATED : 19.10.2022

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THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 3565 of 2017
and
C.M.P. No. 16820 of 2017

P.Sadasivam,
S/o. Pullamma Naidu

... Petitioner

Versus

M.Gurunath,
S/o. M. Krishnamoorthy

... Respondent

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the fair and decreetal order dated 08.08.2017 made in I.A.No. 308 of 2016 in O.S.No. 125 of 2011 on the file of District Munsif Court, Tiruttani.

For Petitioner : Mr. R.Bharath Kumar

For Respondent : Mr.M.S.Subramanian

ORDER



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The Revision Petitioner herein is the plaintiff in the suit in O.S.No. 125 of 2011 on the file of District Munsif Court, Tiruttani and the said suit was filed for the relief of partition and other consequential relief against the defendant.

2. The defendant also contested the suit by filing written statement denying the claim of plaintiff in the year of 2012 itself. Thereafter, issues were framed and the trial was begin and P.W.1 was examined. At that time, he filed an application in I.A.No.308 of 2016 under Order 8 Rule 9 of C.P.C. to receive additional written statement. The said application was strongly objected by the plaintiff stating that belatedly, the application was filed that too when the evidence was begin. The reasons arisen to file the said application was also not properly explained. Only in order to drag on the proceedings, the defendant filed the said application. Considering both side submissions, the trial court finally allowed the application with cost. Challenging the said findings, the plaintiff preferred this Civil Revision Petition.

3. The learned counsel for Revision Petitioner submitted that



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the court below failed to see the conduct of defendant in filing the present application to receive the additional written statement after the disposal of I.A. filed for framing preliminary issues and also filed another application under Order 7 Rule 11 of C.P.C. for rejection of plaint. Hence, to drag on the proceedings, for the same issue, after commencement of trial, the said application was filed, but the same was not appreciated by the trial court. In support of his contentions, he has relied upon the authority reported in **2002 (3) MLJ 259** in the case of ***Kolandasamy vs. Rathinam Alias Rathinayal***. The ratio laid down in the above authority is that the conduct of the party is to be taken into consideration before exercising discretionary power to receive additional written statement. Hence, he prayed to allow this Civil Revision Petition.

4. Heard and considered rival submissions made by learned counsel for revision petitioners as well as respondents and perused the records.



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5. On perusal of records, it reveals that already the defendant filed the application to reject the plaint and to frame preliminary issue. Thereafter, this application was filed, but the same was not appreciated by the trial court. So, after the dismissal of application to reject the plaint and to frame the preliminary issues, he has taken steps to file this application to receive additional written statement. During the filing of additional written statement, he has raised the defence about the fact that the suit is barred by limitation and also claiming right over the suit property with regard to partnership firm under the name and style of M/s. Maruvathur Adhiparasakthi cements. Of course, the plaintiff denied the said application made by the defendant. But, the pleadings in the additional written statement denotes that there is some dispute between the plaintiff and the defendant in respect of earlier partnership proceedings. So, to adjudicate the issue between the parties, both parties have to be given a fair opportunity to submit their defence. Though the conduct of the party reveals that he is going on filing application, the same has not been appreciated by the trial court. Now, the defendant filed this application when the trial was begin and at the time of cross-examination of D.W.1. To avoid multiplicity of proceedings, an



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opportunity is to be given to the defendant to file additional written statement and liberty is granted to the plaintiff to file reply statement if any, to the additional written statement.

6. In the result, the Civil Revision Petition is allowed and the order passed by the trial judge in I.A.No.308 of 2016 is set aside. However, since the suit is pending from the year of 2011, the trial court is directed to proceed with the case and to dispose the same after giving opportunity to both parties within a period of three months from the date of receipt of copy of this order. The defendant is directed to cooperate with the trial proceedings. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

19.10.2022

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To
District Munsif,
Tiruttani.



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19.10.2022