



CRP.Nos.517 & 519 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2023

CORAM:

THE HONOURABLE MRS.JUSTICE **T.V.THAMILSELVI**

CRP.Nos.517 & 519 of 2023 and
CMP.No.4199 of 2023

CRP.No.517 of 2023

Kamala

... Petitioner

Vs.

1.K.Palanisamy

2.K.Periyasamy

3.Mohanasundaram

4.Salomon

... Respondents

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India to allow this revision and to set aside the order of II Additional Sub Court, Erode passed in IA.No.5 of 2022 in OS.No.91 of 2014 dated 13.10.2022.

For Petitioner : Mr.V.P.Senguttuvel,
Senior Counsel
for Mr.K.Indupriya

For Respondents : Mr.J.Ranjithkumar



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... Petitioner

Vs.

1.K.Palanisamy
2.K.Periyasamy
3.Mohanasundaram

4.Salomon

... Respondents

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India to allow this revision and to set aside the order of II Additional Sub Court, Erode passed in IA.No.6 of 2022 in OS.No.91 of 2014 dated 13.10.2022.

For Petitioner : Mr.V.P.Senguttuvel,
Senior Counsel
for Mr.K.Indupriya

For Respondents
For R1 : Mr.J.Ranjithkumar

COMMON ORDER

Challenging the orders passed in IA.Nos.5 & 6 of 2022 in OS.No.91 of 2014 dated 13.10.2022 on the file of II Additional Sub Court, Erode, the first defendant has preferred these revisions.

2. The revision petitioner is the first defendant in OS.No.91 of 2014.

Originally, the plaintiff / the first respondent herein filed suit for specific



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performance before the II Additional Sub Court, Erode. In that suit, the revision petitioner herein is the first defendant. She filed her written statement and the suit was posted for trial. PW1 evidence was recorded. Thereafter to record the evidence of defendants, the matter was posted. DW1 filed proof affidavit, but not appeared for cross examination. Thereafter, evidence was closed. Now the case is posted for judgment. In the meanwhile, the first defendant filed IA.Nos.5 and 6 of 2022 to reopen and recall this revision petitioner and to adduce document on her side. The said applications were dismissed by the trial judge by passing common order stating that in spite of several opportunity given to her, she was not appeared before the court and also not stated any valid reason why she was not able to appear before the court. So on that ground, the petitions were dismissed. Challenging the said findings, the first defendant has preferred these revisions.

3. Notice served and the counsel for the caveator also appeared.

4. The learned counsel for the revision petitioner argues that as defendant, she is entitled to adduce evidence and she is also having sufficient document to prove the same. But the trial judge failed to consider the same and dismissed the petitions erroneously.



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5. By way of reply, the learned counsel for the first respondent submits that fair opportunity was given to the petitioner, but she was not appeared before the court. When the matter was reserved for judgment, she come forward with these applications and the trial judge rightly dismissed the same.

6. But on considering both the submissions and perusal of records, revealed that the plaintiff filed suit in the year 2014 for the relief of specific performance and other reliefs. The first defendant contested the suit and the evidence of PW1 was recorded. The matter was posted for evidence of DW1, but she was not appeared in spite of several opportunity was given by the trial court. Hence, evidence was closed. Now she filed application to reopen the matter. So though there is delay on the side of the first defendant, but she is inclined to adduce evidence. If she is not permitted, her right to defend the case will be defeated. Furthermore, it is a case of specific performance, both the parties have to prove their case independently. Therefore, in order to give valid opportunity, this court is inclined to allow the applications.



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7. Accordingly, this civil revision petition is allowed. However, on seeing the conduct of the petitioner, the applications in IA.Nos.5 & 6 of 2022 are allowed with costs of Rs.5,000/- (Rupees Five Thousand only) ordered to be paid to the Legal Services Authority, Erode within a period of two weeks from the date of receipt of this order, failing which the present revision petitions shall stand automatically dismissed. Thereafter, the petitioner is directed to cooperate for the suit proceedings and the suit is ordered to be disposed within a period of six months from the date of receipt of this order. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

08.03.2023

Index : Yes/No

Internet : Yes/No

Speaking order/non-speaking order
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T.V.THAMILSELVI, J.

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To
The II Additional Sub Court,
Erode

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