



C.R.P.Nos.1100 &1102 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.03.2023

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.Nos.1100 &1102 of 2021
and C.M.P.No.8562 of 2021

Tamilselvi

...Petitioner in both C.R.P's

Versus

1.Muruganandam

2.Geetha

3.Shakila

... Respondents in both C.R.P's

PRAYER in CRP.No.1100 of 2021: Civil Revision Petition filed under Section 115 of CPC, 1908, against the order and decreetal order made in I.A.No.123 of 2019 in I.A.No.244 of 2016 in O.S.No.132 of 2010 dated 04.02.2021 on the file of the District Munsif, Gudiyattam, Vellore District.

PRAYER in CRP.No.1102 of 2021: Civil Revision Petition filed under Section 115 of CPC, 1908, against the order and decreetal order made in I.A.No.54 of 2019 in O.S.No.132 of 2010 dated 04.02.2021 on the file of the District Munsif, Gudiyattam, Vellore District.

For Petitioner in both C.R.P's

: Mr.S.Saravana Kumar

For Respondents1 to 3 in both C.R.P's

: Mr.K.A.Ravindran



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COMMON ORDER

The learned counsel for the Revision Petitioner would submit that the Revision Petitioner as Plaintiff in O.S.No.132 of 2010 has filed a suit for bare injunction against the Defendants. The suit was proceeded and the same was decreed in favour of the Plaintiff on 03.10.2013. Aggrieved by the decree granted in favour of the Plaintiff, the Defendants have preferred an appeal in A.S.No.31 of 2013. In the appeal, the learned Sub-Judge, Gudiyattam had remanded the suit back to the learned District Munsif, Gudiyattam to decide the title. After remand, the Petitioner had filed I.A.No.224 of 2016 for amendment of the plaint which was posted for several adjournments. The Defendant had filed counter on 23.08.2016 and it was adjourned to several days to hear the enquiry. Subsequently, on 06.10.2016 enquiry heard and reserved for orders. On 19.10.2016, orders was not pronounced instead it was suo motto re-opened for clarification and again adjourned on several hearings on 26.04.2017. On 29.04.2017, the suit was dismissed for default.

2. It is the contention of the learned Counsel for the Revision Petitioner that to hear enquiry, the presence of the parties are not necessary. In this case, the learned District Munsif had heard the enquiry and reserved orders.



Subsequently, it was suo motto re-opened for clarification. If at all, it is to be clarified with the learned Counsel and not with the parties. Nowhere in the adjourned days, the learned District Munsif had passed orders directing the parties to appear before the Court. Further, it is the contention of the learned Counsel for the Revision Petitioner that the suit has been remanded with the specific direction to consider the title. Therefore, the Plaintiff was forced to file a petition seeking amendment of the plaint. While so, the learned Judge had dismissed it as though the parties were not present for enquiry. Subsequently, the suit was also dismissed. The petition filed by the Petitioner to condone the delay in filing the petition to restore the suit in I.A.No.54 of 2019 was resisted by the Defendant as Respondent by filing counter. Based on the counter filed by the Defendant in I.A.No.54 of 2019, the learned Judge had dismissed the petition stating that no proper reasons.

3. The learned Counsel for the Revision Petitioner seeks to set aside the order of dismissal and to restore the suit to enable the Plaintiff to agitate her valuable right.



4. The learned Counsel for the Respondent vehemently objects to the submissions of the learned Counsel for the Revision Petitioner by stating that the Respondents have preferred an appeal in A.S.No.31 of 2013. The same was allowed and remanded the original suit for re-trial, also given direction to dispose of the suit within 6 months and directed the parties to appear before the Trial Court on 10.12.2014. As per the order of remand, it is the duty of the Plaintiff to appear before Trial Court and he had not appeared as per the direction of the learned Appellate Judge. Therefore, the order passed by the learned District Munsif, Gudiyattam is a well reasoned order and it does not warrant any interference by this Court. Hence, the learned Counsel for the Respondent seeks to dismiss this Civil Revision Petition as having no merits.

5. On consideration of the rival submissions and perusal of the documents filed by the learned Counsel for the Revision Petitioner, the dismissal of the I.A.No.224 of 2016 is found without any basis. Once the learned Appellate Judge had directed the learned District Munsif to consider the issue of title. The Plaintiff has duty bound to file amendment petition and the amendment petition was also accordingly filed. The learned District Munsif has reserved for orders after hearing the enquiry. Subsequently, for reasons best



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known to the learned District Munsif, suo motto re-opened for clarification. It was adjourned repeatedly for clarification.

6. As rightly pointed out by the learned Counsel for the Revision Petitioner if the learned District Munsif wanted any clarification from the litigant, the learned District Munsif should have directed the appearance of the parties to clarify the same, instead dismissed the petition for amendment. When the presence of the parties are not all required, the said dismissal of the I.A.No.224 of 2016 and subsequently, dismissing the suit itself is found to be unreasonable and unacceptable.

7. Considering the valuable right of the litigant, it is to be noted that on earlier occasion, the Plaintiff having let in evidence and on appreciation of evidence, the very same Court had granted decree of injunction in favour of the Plaintiff. Only in the appeal, instead of disposing of the appeal, the learned Sub-Judge had directed the learned District Munsif to consider the title also. Accordingly, in obedience to the Appellate Court, the Plaintiff in the suit had filed a petition to amend the plaint. The conduct of the learned District Munsif dismissing the amendment petition cannot at all be accepted in the eyes of law.



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SATHI KUMAR SUKUMARA KURUP, J.

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The objections raised by the learned Counsel for the Defendant as Respondent in this Civil Revision Petition that the Plaintiff had not appeared subsequent to the remand cannot be accepted. Therefore, the order passed by the learned District Munsif is set aside. Accordingly, the Civil Revision Petitions are allowed. Consequently, connected miscellaneous petition is closed.

8. The learned District Munsif is directed to proceed further in the light of the directions issued in the appeal.

20.03.2023

Index: Yes/ No
Speaking Order / Non-Speaking Order
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To

The District Munsif, Gudiyattam, Vellore District.

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