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C.R.P.(PD) Nos.3296, 3298 & 3300 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2023

CORAM : JUSTICE **N.SESHASAYEE**

C.R.P.(PD) Nos.3296, 3298 & 3300 of 2019
and CMP.Nos.21412 & 21419 of 2019

B.Vasugi

... Petitioner in all CRPs /
Respondent /Plaintiff

Vs.

1.The Tahsildar
Taluk Office
Pennagaram Taluk
Dharmapuri District.

2.The Village Administrative Officer
Rangapuram Village
Pennagaram Taluk
Dharmapuri District.

3.The Special Tahsildar
Adi-Dravidar Welfare
Dharmapuri Taluk
Dharmapuri District.

4.The State of Tamil Nadu
Rep by the District Collector
Dharmapuri District.

... Respondents 1 to 4 in all CRPs /
Petitioners / Defendants



C.R.P.(PD) Nos.3296, 3298 & 3300 of 2019

Prayer in CRP.No.3296 of 2019 : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 19.11.2018 made in I.A.No.553 of 2017 in O.S.No.76 of 2015 on the file of the learned District Munsif cum Judicial Magistrate, Pennagaram, by allowing this civil revision petition.

Prayer in CRP.No.3298 of 2019 : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 22.08.2019 made in I.A.No.583 of 2018 in I.A.Nos.553 & 554 of 2017 in O.S.No.76 of 2015 on the file of the learned District Munsif cum Judicial Magistrate, Pennagaram, by allowing this civil revision petition.

Prayer in CRP.No.3300 of 2019 : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 19.11.2018 made in I.A.No.554 of 2017 in O.S.No.76 of 2015 on the file of the learned District Munsif cum Judicial Magistrate, Pennagaram, by allowing this civil revision petition.

For Petitioner : Mr.N.Manoharan
For Respondents : Mr.C.Jayaprakash
Government Advocate for R1 to R4



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COMMON ORDER

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1.1 The revision petitioner herein is the plaintiff in O.S.No.76 of 2015 on the file of the District Munsif cum Judicial Magistrate Court, Pennagaram. The suit is laid for an injunction seeking to restrain the defendants / the officials of the State from laying pathway in the private property of the plaintiff. It is further alleged that defendants 1 to 4 are keen to form a pathway for the benefit of the 5th defendant, a certain Joseph and the other villagers who he represents.

1.2 The defendants 1 to 4 had filed the written statement. Since, the fifth defendant did not file his written statement, he was set *ex parte*. The matter proceeded for trial and during trial, the defendants 1 to 4 also did not participate. In this circumstances, the Court passed an *ex parte* decree on 26.04.2016 after evaluating the quality of defence produced by the plaintiff. On 13.07.2016, the plaintiff had intimated the *ex parte* decree passed in his favour. Indeed, the trial Court while passing the *ex parte* decree,

1.3 Subsequently, after some 531 days, the defendants 1 to 4 filed an application under Order IX Rule 13 for setting aside the *ex parte* decree, and



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also another application under Section 5 of the Limitation Act for condoning the delay of 531 days. Both these applications were taken on record by the Court in I.A.No.554/2017 and I.A.No.553/2017 respectively. The trial Court after giving due opportunity to the plaintiff to oppose these applications, on 19.11.2018, vide separate orders allowed them, but subject to the condition that the defendants 1 to 4 paid Rs.2,000/- on each of the applications as costs to the plaintiff. These orders are challenged by the plaintiff in CRP.(PD) No.3296 of 2019 and CRP.(PD) No.3300 of 2019.

1.4 So far as compliance of the cost amount is concerned, the defendants 1 to 4 had taken out a review petition in I.A.No.583/2018, exempting them from paying the cost. Their contention in this I.A., is that these defendants had filed the written statement and they did not know about the trial. Vide order dated 22.08.2019, the trial Court allowed this review petition as well. This is now challenged by the plaintiff in CRP(PD) No.3298/2017.

2.1 Heard both sides. On a perusal of the order passed in I.A.No.553/2017 and I.A.No.554 of 2017 is concerned, this Court finds that the learned trial Judge has exercised his discretion fairly. Indeed, he has taken into account the fact that the defendants have filed the written statement. Therefore,



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this Court does not want to interfere with that portion of the orders of the trial Court allowing I.A.No.553/2017 and I.A.No.554/2017.

2.2 Turning to the cost portion of it, this is the subject matter not only of the orders in I.A.No.553/2017 and I.A.No.554/2017, but also a subject matter in CRP.(PD) No.3298 of 2019. Here, this Court finds that there is no error apparent on the face of the record for the defendants to even contemplate filing a review application. In fitness of things, the trial Court ought not to have even ventured to review its order as concerning the cost it awarded. Necessarily, the order of the trial Court allowing the review petition in I.A.No.583 of 2018 cannot be sustained in law.

3. One negligence of the defendants 1 to 4 has created considerable inconvenience not only to the plaintiff, but also to the legal system. It is time these officials take greater caution in setting themselves as role models and to conduct their affairs vis-a-vis any litigation before the Court for other litigants to emulate. Hence, this Court even as it allows CRP.No.3298 of 2019, orders an additional cost of Rs.2,000/- on the review petition, besides confirming the cost of Rs.2,000/- each ordered by the trial Court in I.A.No.553/2017 and I.A.No.554/2017. The defendants



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are required to pay the plaintiff a total sum of Rs.6,000/- on or before 27.03.2023, failing which, the order passed in I.A.No.553/2017 and I.A.No.554/2017 will stand dismissed.

4. In the eventuality of defendants 1 to 4 complying with the cost hereinabove ordered, the trial Court is required to proceed with the trial of the suit and conclude the same as expeditiously as possible, at any rate, not later than four months from the date it commences the trial.

5. In the result, all these revision petitions are allowed in the manner indicated above. No cost. Consequently, connected miscellaneous petitions are closed.

08.03.2023

Index : Yes / No
Speaking order / Non-speaking order
ds

Note : Issue order copy on 10.03.2023



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To:

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- 1.The District Munsif cum Judicial Magistrate
Pennagaram.
- 2.The Section Officer
VR Record Section
High Court, Madras.



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N.SESHASAYEE.J.,

ds

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