



CRP (MD) No.174 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	04.07.2023
Pronounced on	11.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

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and

CMP(MD)No.814 of 2023

Dhanalakshmi

... Petitioner/ Petitioner/
Petitioner/plaintiff

Vs.

1.Subramani

2.Anjalai

3.Sarasu

4.Karuppiah

5.Arumugam

6.Gomathi

7.Nagammal

... Respondents/Respondents/
Respondents/Defendants

(7th Respondent notice may be dispensed with)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order in I.A.N.01 of 2022 in



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I.A.No.15 of 2019 in O.S.No.105 of 2006, dated 20.12.2022 on the file of the learned District Munsif, Keeranur and allow the civil revision petition.

For Petitioner : Mr.N.Balakrishnan

For R1 to R3
R5 & R8 : Mr.A.Banumathy

For R4 : No appearance

ORDER

This civil revision petition is preferred as against fair and decreetal order in I.A.No.01 of 2022 in I.A.No.15 of 2019 in O.S.No.105 of 2006 dated 20.12.2022 to set aside order of dismissal in I.A.No.15 of 2019 in O.S.No. 105 of 2006, dated 16.08.2022.

2. The petitioner as plaintiff filed a suit for partition against the respondents/defendants. The petitioner claims the respondents 1 and 7 are her parents. The first respondent, who is the father of the petitioner, abandoned her after marrying the second respondent, giving birth to respondents 3 to 6. Hence, the petitioner filed a suit for partition. The first



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respondent contested the suit stating that the seventh respondent is not his wife and the petitioner is not his daughter. The seventh respondent being the mother of the petitioner filed a petition under Section 125 of Cr.P.C against the first respondent claiming maintenance and the same was allowed in her favour. The first respondent also admitted in the cross-examination in the suit that he was sent to imprisonment for three months for non-payment of maintenance and was released only after paying the arrears amount of maintenance to the tune of Rs.12,000/-. It is further submitted that since the first respondent/father while in the witness box denied that the petitioner was not born to him, the petitioner was constrained to file an application in I.A.No.15 of 2019 for DNA test to prove the paternity. The above petition was allowed on 09.03.2022 and an Advocate Commissioner was also appointed with direction that the petitioner and the respondents 1 and 7 to undergo DNA test by collecting blood samples. The petitioner was directed to pay a sum of Rs.12,000/- for the above expenses and a sum of Rs.10,000/- as Commissioner fee. Since the petitioner was fallen sick, she was unable to mobilize the said amount and contact her counsel. Under these circumstances, I.A.No.15 of 2019 was dismissed on 16.08.2022. Thereafter, on 14.09.2022,



the petitioner filed I.A.No.01 of 2022, for setting aside the order dated 16.08.2022, which was dismissed by the Court below, holding that the petitioner is protracting the case. Aggrieved by this, the petitioner is before this Court.

3. The learned counsel appearing for the petitioner/plaintiff would submit that it is trite proposition of law that Courts are there to render justice rather than punishing the litigants for their mistakes. Though the petitioner failed to comply with order of the Court, it was not done wantonly and intentionally, but due to circumstances and facts beyond her reach.

4. On the other hand, the learned counsel appearing for the respondents/defendants would submit that the above suit is for partition and the same was filed on 22.08.2006. The defendants have filed their written statement on 15.12.2006. The suit was dismissed for default on 12.07.2011. In pursuant to the order passed in I.A.No.476 of 2013, the suit was restored to file on 24.04.2014. The application for DNA test was filed by the petitioner after lapse of 13 years i.e., on 05.01.2019 and the same was allowed



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09.03.2022. The said I.A was closed on 16.08.2022 in view of the endorsement made the petitioner. Thereafter, four applications were filed by the revision petitioner in I.A.No.2 of 2023 and the same was dismissed on 30.01.2023. The petitioner filed another application in I.A.No.04 of 2023 for reopening the plaintiff's side further evidence, which was dismissed on 28.06.2023. Again the petitioner filed another application in I.A.No.05 of 2023 to recall P.W.1 and it was also dismissed on 28.06.2023. Thereafter, the petitioner filed another application in I.A.No.06 of 2023 for receiving additional documents and the same was dismissed on 28.06.2023. The arguments on both sides were closed on 03.07.2023 and the suit is now reserved for pronouncing judgment on 17.07.2023. The conduct of the revision petitioner is only to harass the respondents/defendants and to protract the proceedings.

5. Heard on both sides and records perused.

6. On perusal of records, it is found that the suit is filed in the year 2006 and after 13 years, the petitioner/plaintiff has took out an application in



I.A.No.15 of 2019 for DNA test. According to the learned counsel for the petitioner that, the first respondent while in the witness box had voluntarily stated that he is ready for DNA test to prove the fact that the petitioner is not his daughter. Thereafter only, the petitioner came out with an application for DNA test. Since the petitioner was suffering from illness and due to COVID pandemic the petitioner was unable to mobilize fund for DNA test and to pay the remuneration to the Advocate Commissioner. Hence, the learned counsel was forced to make an endorsement for closing the above petition. Thereafter, it was realized that if the above DNA test is not conducted, the petitioner's paternity would be in question and she would be facing humility in the society. Hence, the petitioner was constrained to file a second petition for DNA test.

7. Admittedly, the suit was filed in the year 2006 and thereafter, the suit dismissed for default on 12.10.2011 for non-prosecution. Again the petitioner has moved an application for restoration only in the year 2013. Even after closure of I.A.No.15 of 2019, on 16.08.2022, the second application for DNA test was not filed by the petitioner immediately. Instead,



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the petitioner has filed number of petitions at the stage of arguments and the same were dismissed by the Court below. The conduct of the petitioner would goes to show that she is not interested in pursuing the suit. Her intention is only to protract the proceedings. Admittedly, the suit is now posted for judgment and at this stage even if this petition is allowed, on sympathy ground, it would cause great hardship to the respondents. If really, the petitioner is interested in proving her biological parents, she would have pursued in the earlier application to prove the same. The reasons stated in the affidavit that the petitioner was unable to mobilize the funds for the above expenses, is not acceptable. There is no merit in the above revision petition. No infirmities found in the order of the trial Court and the same calls for no interference. Accordingly, the order passed by the trial Court in I.A.No.01 of 2022 is confirmed and this Civil Revision Petition is dismissed. No costs. consequently, connected miscellaneous petition is closed.

11.07.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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K.GOVINDARAJAN THILAKAVADI

cp

To

The District Munsif,
Keeranur.

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