



C.R.P(MD)No.2186 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

C.R.P(MD) No.2186 of 2019
and
C.M.P. (MD) No.11407 of 2019

P. Ashoka Mithran

...Petitioner

Vs.

1. Usha

Pappammal @ Pappa (died)

2. Sankaranarayanapillai

3. Ponni

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated



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07.08.2019 made in I.A.No.1 of 2019 in O.S.No.54 of 2009 on the file of the Additional District and Sessions Judge, (Fast Track Court), Kanniyakumari at Nagercoil and allow this Civil Revision Petition.

For Petitioner : Mr. P. Thiagarajan

For Respondents : Mr. M.P. Senthil for R1

Unserved – for R2

No appearance - for R3

ORDER

This Civil Revision Petition is filed against the order dated 07.08.2019 passed in I.A.No.1 of 2019 in O.S.No.54 of 2009 on the file of the Additional District and Sessions Judge, (Fast Track Court), Kanniyakumari at Nagercoil and allow this Civil Revision Petition.



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2. The Revision Petitioner is the plaintiff and the respondents are defendant in the suit in O.S.No.54 of 2009 on the file of the Additional District and Sessions Judge, (Fast Track Court), Kanniyakumari at Nagercoil, filed for specific performance. Consequent to the death of the original defendant, the defendants 3 and 4 are brought on records as legal heirs. Originally the suit was posted for arguments on 26.02.2019. On 19.02.2019 the defendants 3 and 4 were permitted to file their written statement. But due to illness the third defendant had gone to Trivandrum for taking treatment, she was unable to file the written statement on their part. Hence, the trial Court closed the chance given for filing written statement and the case was posted for proceed to argument. At that stage, the defendant filed a petition under Section 151 of Code of Civil Procedure to receive the written statement. After hearing both sides, the trial Court allowed the I.A.No.1 of 2019 by its order, dated 07.08.2019 holding that in the interest of justice the petitioner therein must be given an opportunity to establish her right in the suit. If the right of the petitioner/third defendant is denied, it would



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be a great injustice to the petitioner/third defendant. At the same time, the respondent/ plaintiff is given an opportunity to file his reply statement for any new fact which is contrary to the stand already taken by her mother i.e., the original defendant. Aggrieved by the said order, the present Civil Revision Petition is filed.

3. Heard Mr.P.Thiagarajan, learned counsel for the petitioner and Mr.M.P.Senthil, learned counsel appearing for the first respondent and perused the material available on record.

4. After impleading the defendants 3 and 4 in the suit, they were permitted to file their written statement. But due to illness, the third respondent could not file it within the stipulated time and accordingly, the chance given for filing written statement was closed. Subsequently, the third defendant came up with this application to receive the written statement.



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5. The main objection of the Revision Petitioner/plaintiff is that there are lot of things in which the third defendant bringing forward new fact which is contrary to the statement filed by the original defendant and it will change the character of the stand taken by the original defendant. But while allowing the application, the Court below granted opportunity to the Revision Petitioner / plaintiff to file his reply statement for any new fact which is contrary to the stand already taken by her mother. It is also to be noted that when the right of the defendants to implead them in the suit was already denied and it was challenged before this Court in C.R.P.No.2318 of 2011 and it was dismissed. Subsequently, the defendants 3 and 4 pleaded and they were permitted to file their written statement.

6. Having considered the facts and circumstances of the case, in the considered opinion of this court by permitting the third defendant in the suit to file written statement, no prejudice will be caused to the petitioner/plaintiff. Due to the reason that they were



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given opportunity to file written statement for any new fact and contrary to the stand already taken by the original defendant.

7. For the reasons stated above, in our considered opinion, there is no any illegality or irregularity in the order passed by the Court below which is under challenge in this Civil Revision Petition and this Court is not inclined to interfere into the same.

8. Accordingly, this Civil Revision Petition is dismissed.

9. However, it is made clear that as already stated in the order of the trial Court, while permitting the third defendant to file written statement, the plaintiff is given opportunity to file reply statement for any new fact which is contrary to the stand taken by the her mother/original defendant. The trial Court has to provide such opportunity to the plaintiff.

10. No costs.



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11. Consequently, connected Civil Miscellaneous

Petition is closed.

09.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
RM

To

The Additional District and Sessions Judge,
Fast Track Court,
Kanniyakumari
at Nagercoil.



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BATTU DEVANAND, J.

RM

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