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C.R.P.(MD)No.2502 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.06.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.2502 of 2022
and
C.M.P.(MD)No.12303 of 2022

Maduraiveeran, S/o.Late.Sundaram .. Petitioner
Versus

Pattu, W/o.Maduraiveeran .. Respondent

Prayer :- Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 16.11.2022, passed in I.A.No.4 of 2022 in O.S.No.100 of 2020, on the file of the II Additional District Court, Tiruchirapalli.

For Petitioner : No Appearance

For Respondent : Mr.S.Sitharthan

ORDER

The petitioner is aggrieved by the fair and decreetal order dated 16.11.2022, passed in I.A.No.4 of 2022 in O.S.No.100 of 2020, on the file of the II Additional District Court, Tiruchirapalli.

2. There is no representation on behalf of the petitioner.



3. At the time of admission, this Court had granted interim stay of the proceedings in O.S.No.100 of 2020, on the file of the II Additional District Court, Tiruchirappalli.

4. The learned counsel for the respondent, who assisted this Court, submits that the petitioner and the respondent are estranged husband and wife. It is the case of the respondent that she has filed H.M.O.P.No.141 of 2018 for restitution of conjugal rights and the petitioner herein has filed H.M.O.P.No.142 of 2018 for dissolving the marriage solemnized between him and the respondent.

5. It is submitted that the petitioner herein has filed O.S.No.100 of 2020 for declaration and injunction to declare the property standing in the name of the respondent as that of the petitioner. In the suit, the petitioner filed I.A.No.4 of 2022 under Order XVIII Rule 17 read with Section 151 of C.P.C. to re-call D.W.1 for further cross-examination after the said witness was examined and cross-examined. The Court below has dismissed the said I.A. filed by the petitioner under Order XVIII Rule 17 read with Section 151 of C.P.C. with the following observation:-

"7. Overall perusal of the case bundle, considering the arguments put forth by the respondent and the petitioner, sufficient opportunities have been given to the petitioner to cross examine DW.1. The defendant who is plaintiff in O.S.No.189/2015 has approached the Hon'ble Madurai Bench of Madras High Court, Madurai and obtained a direction to dispose the cases expeditiously.



8. *Considering the fact and nature of the case, the petitioner has swallowed more time and chances given by the Court. The petitioner cross examined the defendant who is DW.1 in three times in length. Another case in O.S.No.189/2015 is stayed by the Hon'ble Madurai Bench of Madras High Court. The attitude of the petitioner shows that he tried to drag the case proceedings. The petition in I.A.No.3/2022 to reopen the case is also dismissed. It is a direction case. Hence, this court comes to a conclusion that if a chance given to the petitioner, it will not be fruitful to the case and hence, the petitioner is not entitled to the relief sought by him.*

9. *In the result, the petition is dismissed without cost."*

6. Aggrieved by the same, the petitioner has filed the present Civil Revision Petition.

7. The Court record indicates that the respondent had also filed O.S.No.189 of 2015 before the II Additional District Court, Tiruchirapalli, for partition. The petitioner herein has also filed O.S.No.211 of 2016 before the Subordinate Court, Thuraiyur, for declaration and permanent injunction. The respondent herein had filed C.R.P.(MD)No.304 of 2020 against the order dated 14.11.2019, passed in Tr.O.P.No.67 of 2019 by the learned Principal District Judge, Tiruchirappalli, transferring the case. This Court, by its order dated 12.03.2020, allowed the Civil Revision Petition with the following observations:-

"5. Admittedly, the revision petitioner filed the suit in O.S.No.189 of 2015 for partition and the same is pending before the learned II Additional District Judge, Tiruchirapalli. The respondent herein filed the suit in O.S.No.211 of 2016 for declaration and permanent injunction and the same is also pending before the learned Subordinate Judge, Thuraiyur. Further, trial has commenced in O.S.No.211 of 2016, however, the evidence of witnesses is yet to be completed, whereas, in O.S.No.189 of 2015, trial is yet



to be commenced. In both the suits, parties are same and the properties are also one and the same. Under these circumstances, if both the suits are tried by different Courts, there is a possibility of conflict of judgments and in order to avoid the same and also to avoid the waste of Court time in examining the witnesses, both the suits can be tried by one Court. If both the suits are tried by one Court, no prejudice would be caused to both the parties. Moreover, it is submitted that the parties in O.S.No.211 of 2016 are also aged persons. Furthermore, since the suit in O.S.No.189 of 2015 is pending before the learned II Additional District Court, Tiruchirappalli, the same cannot be transferred to the Sub Court, Thuraiyur. Therefore, the suit in O.S.No.211 of 2016, pending before the Sub Court, Thuraiyur, can be transferred to the file of the learned II Additional District Court, Tiruchirappalli, for simultaneous trial.

6. Therefore, this Court, in order to avoid conflict of judgments and also in the interest of justice, is inclined to transfer the suit in O.S.No.211 of 2016 pending on the file of the Sub Court, Thuraiyur, to the file of the learned II Additional District Court, Tiruchirappalli, for simultaneous trial.

7. Accordingly, the Civil Revision Petition is allowed and the order dated 14.11.2019 passed in Tr.O.P.No.67 of 2019 by the learned Principal District Court, Tiruchirappalli is hereby set aside. The suit in O.S.No.211 of 2016 pending on the file of the learned Sub Judge, Thuraiyur, is hereby withdrawn and transferred to the learned II Additional District Judge, Tiruchirappalli, to try along with O.S.No.189 of 2015, pending on its file, for simultaneous trial.

8. The learned Sub Judge, Thuraiyur, is directed to send the entire files relating to O.S.No.211 of 2016 to the learned II Additional District Judge, Thiruchirappalli, within one week from the date of receipt of a copy of this order. After receiving the same, the learned II Additional District Judge, Tiruchirappalli, is directed to renumber the suit and try along with O.S.No.189 of 2015 for simultaneous trial and dispose of the same within a period of three months thereafter. No costs."

8.The point for consideration is whether the petitioner is entitled for the relief in the Civil Revision Petition against the impugned order, declining his request in

I.A.No.4 of 2022 filed under Order XVIII Rule 17 read with Section 151 of C.P.C. to



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re-call D.W.1 for cross-examination after D.W.1 was examined in chief and partly cross-examined. The Court below has clearly found the conduct of the petitioner objectionable and had posted the case on 23.08.2022 for cross-examination of D.W.1. However, the learned counsel for the petitioner did not appear on the said date. Thereafter, the second witness on behalf of the respondent was also examined and cross-examined. Hence, the evidence was closed on 12.09.2022. It was in compliance of the order of this Court, dated 12.03.2020, in C.R.P.(MD)No.304 of 2020. Therefore, I find no reasons to interfere with the impugned order dated 16.11.2022, passed in I.A.No.4 of 2022 in O.S.No.100 of 2020.

9.In the light of the above, the present Civil Revision Petition is liable to be dismissed. Accordingly, it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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09.06.2023

To

The II Additional District Judge,
Tiruchirapalli.



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C.SARAVANAN, J.

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Order made in
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