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C.R.P. No. 2893 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2024

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P. No. 2893 of 2024

and

C.M.P. No. 15388 of 2024

R.Shanmugasundaram

... Petitioner / Plaintiff / 3rd defendant

Vs.

1. Chellammal

2. Thulasimani

3. Palaniammal

Muthusamy Gounder (died)

Paramasivam (died)

4. Thulasimani @ Nataraj

5. Pappathi @ Rukmani

6. Renuga

7. Amutha

8. C.Palanisamy

9. T.K.Magesh

10. C.Subramaniam

...Respondents / Respondents /
Plaintiff / Defendants 1,2,4 to 12

PRAYER: Civil Revision Petition is filed under Article 227 of the



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Constitution of India, against the fair and final order dated 14.06.2024 passed in I.A. No. 12 of 2024 in O.S. No. 303 of 2008 on the file of the District Munsif Court, Perundurai.

For Petitioner : Mr. R.P.Ruban Chakravarthy
For R1 : Mr. M.Guruprasad
For R2 to R4 : NA
For R3, R5 to R10 : NRN

ORDER

O.S. No. 303 of 2008 is a suit for partition and separate possession.

2. The civil revision petitioner is the 3rd defendant in the suit. He remained exparte and therefore took out an application under Order IX Rule 7 of CPC. To the said application, the plaintiff had no objection. Therefore, the application was allowed with the condition that the 3rd defendant will cross examine the plaintiff on 14.06.2024. On 14.06.2024, the 3rd defendant was not willing to cross examine the plaintiff. Therefore, the petition under Order IX Rule 7 of CPC was dismissed. Hence, this revision.

3. Heard Mr. R.P.Ruban Chakravarthy, learned counsel for the civil revision petitioner and Mr. M.Guruprasad, learned counsel for the 1st respondent.

4. The facts narrated above would show that on account of the default



committed by the 3rd defendant to cross examine the plaintiff, it has resulted in the dismissal of an application under Order IX Rule 7 of CPC.

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5. Mr. R.P.Ruban Chakravarthy would submit that it was an error committed by the 3rd defendant and it can be rectified by the Court at any stage.

6. Mr. M.Guruprasad would point out that despite the fact that the plaintiff had said no objection to the application on the condition that the 3rd defendant would cross examine the plaintiff, the 3rd defendant had not availed the benefit of cross examination.

7. I have considered the arguments on either side and gone through the records.

8. A cross examination of a party is done by a counsel and not done by the party himself. For the default committed by the counsel, serious consequences must not result on the party. As rightly pointed out by Mr. M.Guruprasad, the proceedings have been pending from 2008. Therefore, while allowing the revision, I am inclined to impose cost on the 3rd defendant with a further direction that the 3rd defendant will cross examine the plaintiff on the next opportunity granted by the Court. In case if he fails to do so, he



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will forfeit his right to cross examine. In a way, this will also help the plaintiff since there will be some evidence on record and in case the 3rd defendant does not cross examine the plaintiff, the defendants will again move an application under Order IX Rule 13 to prolong the litigation.

9. Hence, the order of the learned Judge dated 14.06.2024 is set aside on the condition that

(i) the 3rd defendant will pay a sum of Rs.10,000/- to the plaintiff on or before 04.09.2024.

(ii) the P.W.1 will be present in Court on 04.09.2024 and the 3rd defendant must complete the cross examination on that date.

In case either of these clauses are violated, the benefit of the order will not enure in favour of the civil revision petitioner.

10. With the above directions, the Civil Revision Petition stands allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

28.08.2024

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
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To



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The District Munsif Court, Perundurai.

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V.LAKSHMINARAYANAN, J.,

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