



C.R.P.No.3960 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 30..09..2024

Coram

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition No.3960 of 2024

and

C.M.P.No.21691 of 2024

Manikandan

..... Petitioner

-Versus-

Anbuselvi

..... Respondent

Petition filed under Article 227 of the Constitution of India, praying to set aside the impugned fair and decretal order dated 02.07.2024 in I.A.No.1404 of 2023 in O.S.No.258 of 2011 passed by the learned Principal District Munsif, Gingee, Villupuram Principal District, by allowing the Civil Revision Petition.

For Petitioner : Mr.G.Balamanikandan



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ORDER

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This civil revision petition arises against an order passed by the learned Principal District Munsif, Gingee, dated 02.07.2024 in I.A.No.1404 of 2023 in O.S.No.258 of 2011.

2. The suit in O.S.No.258 of 2011 was originally presented as a suit for permanent injunction. A written statement was filed and the plaintiff also entered the witness box and filed her proof affidavit. Thereafter, taking into consideration the averments made in the written statement, an application was taken out by the plaintiff to amend the plaint in I.A.No.1351 of 2019. The said application was allowed and the suit from being a mere suit for bare injunction was converted into a suit for declaration and for permanent injunction. Thereupon, the plaintiff filed an application for filing a fresh proof affidavit since the previous proof affidavit obviously cannot be proceeded with. The learned Principal District Munsif after the receipt of the counter from the defendant, allowed the application. Hence, this revision.

3. Heard Mr.G.Balamanan for the civil revision petitioner.



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4. Mr.G.Balamananikandan would point out that the matter had been adjourned for trial from 02.03.2022 to 08.06.2023 to enable the plaintiff to proceed further with the trial. However, the plaintiff was not willing to do the same. He would point out that the entire idea of the plaintiff is only to drag on the matter and see that the suit proceedings do not see the light of the trial. He would further plead that the order passed by the learned Principal District Munsif permitting the receipt of a fresh proof affidavit in chief as P.W.1 by impugned order is erroneous and requires interference at the hands of this court.

5. I have carefully considered the submissions of Mr.G.Balamananikandan.

6. There is no dispute that the suit was originally presented for permanent injunction and the plaintiff also filed her proof affidavit as P.W.1 on 18.07.2019 and marked Ex.A1 to Ex.A.6. Thereafter, she filed an application for amendment seeking a relief of declaration and for a consequential relief of recovery of possession. The said prayer was also allowed on 01.04.2021. Obviously, when the plaint stands amended, the original proof affidavit filed in chief as P.W.1 cannot be proceeded with. This is because, the proof affidavit would have been filed keeping in mind that the suit is one for permanent injunction. With the change in the prayer, the plaintiff will have to file a fresh



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proof affidavit as P.W.1. A memo seems to have been filed by the plaintiff to eschew her previous proof affidavit, and the said memo was also ordered by the learned Principal District Munsif. The evidence that was on record having been removed from the record by the court, the plaintiff is entitled to file a fresh proof affidavit. This is what she has exactly done by virtue of the application in I.A.No.1404 of 2023. I am not able to see any error in the order passed by the learned Principal District Munsif, Gingee in I.A.No.1404 of 2023 in O.S.No.258 of 2011 dated 02.07.2024 in allowing the application to file a fresh proof affidavit. Unless and until a fresh proof affidavit comes on record, the suit cannot be proceeded with trial. Hence, the civil revision petition fails, and the same is liable to be dismissed.

7. At this stage, Mr.G.Balamanikandan would point out that the defendant has been contesting the suit since the year 2011 and despite the fact that 13 years have elapsed, the suit is still at the stage of P.W.1 evidence. He would therefore seek for expeditious disposal of the suit.

8. I find the request extremely reasonable. When the suit is pending for more than a decade, it should have triggered the learned Principal District Munsif to hasten the litigation at all stages. The learned Principal District



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Munsif, Gingee, is requested to take note of the fact that the suit has been pending for more than 13 years. Accordingly, he will give all the expedition that the suit requires and dispose of the same within a period of nine months from the date of receipt of a copy of this order.

9. This civil revision petition is dismissed with the above directions. No costs. Consequently, connected CMP is closed.

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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To

1.The Principal District Munsif, Gingee, Villupuram District.



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V.LAKSHMINARAYANAN.J.,

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