



C.R.P.(MD)No.228 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 19/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P(MD)No.228 of 2022

and

CMP(MD)No.1016 of 2022

V.Suriyanarayanan
through his power agent
S.Deepalakshmi

: Petitioner/1st Respondent/
Plaintiff

Vs.

1.T.Ayyanar
2.T.Sankaralingam
3.T.Arulvinayagam

: Respondents 1 to 3/
Petitioners/
Defendants 5 to 7

4.Janakiammal
5.S.Balasubramanian
6.D.Radhakrishnan
7.R.Saratha

: Respondents 4 to 7/
Respondents 2 to 5/
Defendants 1 to 4

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 24/11/2021 passed in IA No.2 of 2020 in OS No.255 of 2010 on the file of the Additional Sub Court, Srivilliputur and pass such further or other orders.

For Petitioner : Mr.M.P.Senthil

For R1 to R4 : Mr.H.R.Sreenivasan



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O R D E R

WEB COPY This civil revision petition has been filed seeking to set aside the fair and decreetal order, dated 24/11/2021 passed in IA No.2 of 2020 in OS No.255 of 2010 on the file of the Additional Sub Court, Srivilliputur

2.The facts in brief:-

Suit in OS No.255 of 2010 was filed by the petitioner for the relief of declaration that the suit property absolutely belongs to him; and for consequential recovery of possession. Apart from that, other declaratory relief are sought in the plaint. The defendants appeared, issues framed, trial commenced. During the trial process, a petition in IA No.2 of 2010 is taken out by the respondents herein namely the defendants 5 to 7 under section 151 of C.P.C to examine the 5th defendant as a witness. For that purpose, the evidence must be reopened. That was allowed with condition.

3.Against which, this civil revision petition is preferred.



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4.The respondents filed a petition with the following averments:-

The main suit is one for declaration and for recovery of possession. On the side of the plaintiff, evidence was closed. Now it is posted for the evidence on the side of the defendants 5 to 7. At that time corana period intervene so he could not contact his advocate time. So the court *suo motu* closed the evidence on their side and posted the matter for argument.

5.That was resisted by the petitioner stating that the case was posted for the defendants side evidence on 16/12/2019, 10/12/2020 and 21/01/2020. On 21/01/2020, a petition was filed by the respondents, that was allowed. He filed another application seeking further time. Only at that point of time, the trial court closed the evidence *suo motu*. This is the second time, the respondents did not come forward to examine themselves.

6.The learned counsel appearing for the petitioner would submit that this is not the first time that default has been committed by the respondents, the second default. If though this default is condoned by this court he will not come forward to examine themselves as



witness. According to him, the case is of the year 2010.

Because of the inaction on the part of the respondents herein, it could not be completed.

7.Per contra, the learned counsel appearing for the respondents would submit that sufficient reason was assigned by them before the trial court. That was accepted by the trial court with condition. He is ready to comply the condition. So no interference is required.

8.Heard both sides.

9.As mentioned above, the only contention on the part of the petitioner is that the respondents are not cooperating with the completion of the trial process. They remained ex-parte. For the first time, it was allowed. Again it was posted for their side evidence. Again another default was committed. There is no guarantee that they will cooperate with the trial court to complete the trial process within the reasonable time. No doubt that second default is committed by the respondent. But however condition is imposed upon them to cross examine their witnesses. On 30/11/2021. If the condition is not complied, the automatically the petitioner would have been dismissed by the trial court.



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But without waiting till 30/10/2021, this revision petition is filed expressing grievance over the order.

10.The suit is of the year 2010, still it could not be completed. So the inconvenience caused to the petitioner can be compensated by way of costs. But if right of leading evidence is denied, the serious prejudice will be caused to the respondents herein.

11.On that account, the order passed required to be modified to the effect that the respondents must pay a sum of **Rs.5,000/- (Rupees Five thousand only) as cost to the petitioner before the trial court on or before 01/04/2024.** On payment of costs, the trial court may fix the date for the examination of the witnesses on the side of the defendants. The defendants must examine themselves without fail. If any failure is noticed, further orders may be passed by the trial court.

12.With the above said modification, this petition stands **disposed of**. No costs. Consequently, connected Miscellaneous Petition is closed.

19/03/2024

Index:Yes/No
Internet:Yes/No
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WEB COPY To,

- 1.The Additional Sub Court,
Srivilliputhur.
- 2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

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