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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2024

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)(PD)No.426 of 2021

and

C.M.P.(MD)No.2318 of 2018

Subbammal

... Petitioner

-VS.-

1.Lakshmi

2.Lakshmi Nanammal

3.Suresh

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair and executable order dated 02.03.2020 passed in I.A.No.606 of 2019 in O.S.No.170 of 2010 by the District Munsif, Thirumangalam.

For Petitioner :Mr.P.Shanmugam

For Respondents :Mr.S.Prabhu



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ORDER

This Civil Revision Petition has been filed challenging the order, dated 02.03.2020, passed in I.A.No.606 of 2019 in O.S.No.170 of 2010 by the learned District Munsif, Thirumangalam.

2.The petitioner is the plaintiff in the suit in O.S.No.170 of 2010. The plaintiff has filed a partition suit in which, the third respondent/third defendant, has filed a written statement on 18.09.2010. The respondent in the written statement had contended that the plaintiff had sold certain properties, which are the subject matter of the suit to third person and the second contention is that the plaintiff's mother had executed a settlement deed in favour of the third defendant and the petitioner had sold certain properties in the name of the third defendant. To refute those allegations, the plaintiff has filed an application before the trial Court in I.A.No.606 of 2019 contending that he wants to file an objection to the contents in the written statement.

3.The trial Court had observed that the application filed under Order VIII Rule 9 CPC is nothing but of a subsequent evidence. The trial Court has



considered the allegations made in the application filed by the petitioner/plaintiff and had held that this application is filed with substantial delay of nine years and this application is only to protract the proceedings which is pending before the Court. Accordingly, the trial Court has dismissed the said application, against which, present Civil Revision Petition has filed by the petitioner, who is the plaintiff in the suit.

4. Heard the learned Counsel for the petitioner and the respondents.

5. The learned Counsel for the petitioner contended that the allegations made by the respondents/defendants are baseless allegation and without any materials and if the petitioner/plaintiff fails to refute such allegations, it is difficult for the petitioner/plaintiff to get along in the suit, which will be detrimental to him.

6. *Per contra*, the learned Counsel for the respondents contended that the defendant has filed the written statement on 18.09.2010 making several allegations against the plaintiff. The plaintiff knowing well that the written



statement was filed on 18.09.2010, filed this I.A.No.606 of 2019 only in the year 2019 having waited for nine years.

7.It is not in dispute that the suit is for partition and the plaintiff and the defendants are relatives. Admittedly, the issues is not with regard to the including of any of the properties, which were left out in the suit scheduled property, whereas, the petitioner/plaintiff wants to refute the allegations made by the respondents/defendants in the written statement. It is clear from the records that when the written statement was filed on 18.09.2010, the application in I.A.No.606 of 2019 was filed after a lapse of nine years under Order VIII Rule 9 CPC which is extracted hereunder:

“Subsequent pleadings :- No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms, as the Court thinks fit; but the Court may at any of the parties and fix a time of not more than thirty day for present the same.”

8.When the plaintiff was aware about the allegations from the date of filing of the written statement, he did not make any objections for the past nine



years and filing such an application with an unexplained inordinate delay is nothing but to protract the proceedings. As this application is filed without any reasons or right, the order passed by the learned District Munsif, Thirumangalam, passed in I.A.No.606 of 2019 in O.S.No.170 of 2010, dated 02.03.2020, is confirmed. The Civil Revision Petition is dismissed. As the suit is of the year 2010, the trial Court is directed to conclude the proceedings within a period of eight months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

02.12.2024

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

To
The District Munsif, Thirumangalam.



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N.SENTHILKUMAR, J.

cmr

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