



C.R.P(MD)No.977 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 01.07.2024

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THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

**C.R.P(MD)No.977 of 2023
and
C.M.P(MD)No.4468 of 2023**

Leela Devi (died)
S.Madhu

... Revision Petitioner / 2nd Petitioner /
2nd Plaintiffs

Vs.

Ramaraj Raja

... Respondent / Respondent / Defendant

PRAYER :-

This Civil Miscellaneous Appeal is filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 08.02.2023 in I.A.No.5 of 2023 in O.S.No.47 of 2013 on the file of the District Munsif Court, Nanguneri, by allowing this Civil Revision Petition.

For Petitioner : Mr.V.Meenakshisundaram

For Respondent : Mr.T.Selvan



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ORDER

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The Civil Revision Petition is filed against the fair and decreetal order of the learned District Munsif Court, Nanguneri, in I.A.No.5 of 2023 in O.S.No.47 of 2013.

2. The suit is for declaration and permanent injunction. Both side evidence was over. As a matter of fact, the plaintiffs' evidence was closed on 20.06.2022 and the defendant's evidence was closed on 04.11.2022 and the matter was listed for arguments on 14.11.2022 and thereafter for the second time on 24.11.2022. On 24.11.2022, the present I.A.No.5 of 2023 was filed to reopen the plaintiff side evidence. The reason mentioned in the application is that the case of the plaintiff is that the plaintiff is enjoying the property by putting up fence and also by employing a watchman. The defendant has denied the same in the written statement and D.W.1 also in his box has denied the possession of the plaintiff. Eventhough the plaintiff has produced relevant document to prove his possession, only to corroborate the same and further buttress his case he is now seeking to examine the watchman who was employed by the plaintiff.



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3. The learned counsel for the petitioner would submit that only on the ground of delay and that the application has been filed in the routine manner, the petition is dismissed.

4. Per contra, the learned counsel appearing on behalf of the respondent submits that the suit itself was filed in the year 2013. The case of the parties are very clear from their respective plaint and the written statement. Therefore, the plaintiff should have let in whatever evidence he wants when the chance was given to him. He cannot be permitted to now let in evidence to fill up the lacuna after the defendant side is examined. He would also further submit that when almost 10 years are over, the trial Court rightly dismissed the application for reopening the case. According to him, the fact of possession is to be proved by letting in appropriate documents and when the land in question is an agriculture land and the very plea of the plaintiff that he is seeking to prove his possession by examining the watchman itself, is unsustainable.

5. I have considered the submission made by either side and perused the material records of the case.



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6. Though *prima facie* I agree with the view of the learned counsel appearing for the respondent that the possession in respect of the agricultural land has to be proved in the manner known to law still as contended by the learned counsel on behalf of the petitioner, to further buttress or to corroborate, examining the alleged watchman may not be out of place and cannot be termed as irrelevant at the threshold. The only question to be considered therefore, is that whether the delay would disentitle the plaintiff. It is true that there is slackness on the part of the plaintiff in not examining the witness when his turn came and trying to examine him only at the stage of arguments. For that slackness on the part of the plaintiff, the defendants can be compensated by way of cost.

7. Let the plaintiff pay a cost of Rs.5,000/- on or before 12.07.2024 to the defendant. As far as the merits of the matter is concerned, though routinely it cannot be entertained, considering the over all facts and circumstances of the case, when the case of the parties is specific relating to fencing and appointment of watchman, I am of the view that one opportunity can be granted to the plaintiff. In order to avoid further protracting, this Court can fix proper schedules for the same.



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8. Therefore, this Civil Revision Petition is disposed of on the following terms:

i) On or before 12.07.2024, the plaintiff shall pay a sum of Rs.5,000/- (Rupees Five Thousand only) as cost to the defendant side either by paying it to the learned counsel appearing before this Court or before the trial Court and file a memo before the trial Court to that effect ;

ii) The order dated 08.02.2023 in I.A.No.5 of 2023 in O.S.No.47 of 2013 on the file of the District Musnif Court, Nanguneri, is set aside and consequently I.A.No.5 of 2023 shall stand allowed. In the next hearing date after 12.07.2024, the plaintiff shall be ready with the witness and on the same hearing date the witness shall be examined and the defendant shall cross examine as expeditiously as possible, the trial Court shall dispose of the main suit itself.

(iii) Consequently, connected miscellaneous petition stands closed. No costs.

01.07.2024

NCC: Yes / No
Index: Yes / No
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D.BHARATHA CHAKRAVARTHY, J.

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To

- 1.The District Munsif Court, Nanguneri.
- 2.The Section Officer, Vernacular Records Section,
Madurai Bench of Madras High Court, Madurai.

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and

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