



CRP.No.2808 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 02.04.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

CRP.No.2808 of 2022
and CMP.No.15133 of 2022

S.K.Giri

... Petitioner/Respondent/Respondent

Vs

1.K.Chandrasekaran
2.Vellasavalli
3.Pedhapappa @ Padmavathi
4.Chinnappa

... Respondents/Petitioners / Appellant

Prayer : Civil Revision Petition filed under Section 115 of Civil Procedure Code praying to set aside the order passed in I.A.No.4 of 2021 in I.A.No.3 of 2019 in Unnumbered A.S.Sr.No.5087 of 2019 by the Principal District Court, Thiruvallur, dated 06.07.2022.

For Petitioner : Mr.K.Balaji

For Respondents : Ms.V.Kaavya
for Mr.A.R.Suresh [R1 to R4]



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ORDER

The civil revision petition arises against the dismissal of the application in I.A.No.4/2021 filed to reopen the evidence of the respondents in I.A.No.3/2019 in unnumbered A.S.SR.No.5087/2019, on the file of Principal District Court, Tiruvallur.

2.1 The revision petitioner/plaintiff has presented the original suit in O.S.No.100/2007 for specific performance of an agreement of sale before the learned Subordinate Judge, Tiruvallur. The said suit was decreed on 06.11.2007. Aggrieved by the same, the defendants/respondents herein had preferred an appeal in A.S.SR.No.5087/2019. As there was delay in presentation of the appeal, an application was taken out in I.A.No.3/2019 by the defendants to condone the delay of 4126 days in filing the appeal.

2.2 In the said application, in order to prove that there was sufficient cause, the defendant has examined P.W.1 to P.W.4, and the evidence was closed on 11.12.2020. Thereafter, the Court offered an opportunity to the revision petitioner/plaintiff to let in evidence, but he did not want to let in



evidence, and made an endorsement that he has no evidence on his side.

Then, on 21.01.2021, an application was filed by the plaintiff/civil revision petitioner to reopen the evidence on his side to cross-examine the defendant. That application was allowed and the defendant was cross-examined on the same day (21.01.2021). Subsequently, the matter was posted for arguments. Again, after the evidence of the respondent was closed, the plaintiff / revision petitioner took out an application under Order XVIII Rule 17 r/w 151 to reopen his side and let in evidence. The ground on which the plea for reopen and recall was made is that the previous counsel had died and a new counsel has come on record. This reason was not accepted by the learned Judge who dismissed the application in I.A.No.4 of 2021, against which the present revision is filed.

3. Heard Mr.K.Balaji, learned counsel for the revision petitioner and Ms.V.Kaavya for Mr.A.R.Suresh, learned counsel for the respondents.

4. The plaintiff as respondent in I.A.No.3 of 2019 has admittedly closed his evidence as early as 2020. Thereafter, he attempted to reopen the evidence to cross-examine the defendant and he was successful. Yet again



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after having closed his side, the death of his counsel is cited as the reason for allowing him to let in further evidence. Change in counsel cannot be a ground for letting in evidence when the revision petitioner/plaintiff himself through his counsel has made an endorsement that he has no evidence to let in.

5. Be that as it may, an order under made Order XVIII Rule 17 is a discretionary order. Unless and until the discretion exercised is capricious or in a arbitrary manner, this Court seldom interferes with it. A reading of paragraphs 6 and 7 of the impugned order shows that the learned Judge has applied her mind to come to the conclusion that no reasons have been offered for reopening the evidence.

6. I do not find any reasons to differ from the view taken by the learned Judge in the impugned order. The civil revision petition is dismissed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

02.04.2024

Index:Yes/No

Speaking order/Non-speaking orders



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- To
- 1.The Principal District Judge
Thiruvallur.
 - 2.The Section Officer
VR Section
High Court, Madras.



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V.LAKSHMINARAYANAN,J.

ds

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