

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(PD).No.1701 of 2015
and M.P.No.1 of 2015

1.Kuppulakshmi

2.Vijayalakshmi

... Petitioners

Vs.

1.Lakshmi

2.Rajammal

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 04.08.2014 passed in I.A.No.262 of 2014 in O.S.No.61 of 1999 on the file of the learned II Additional District Munsif, Erode.

For Petitioners : Mr.T.M.Hariharan

ORDER

Challenging the fair and final order passed in I.A.No.262 of 2014 in O.S.No.61 of 1999 on the file of the II Additional District Munsif Court, Erode, the defendants 4 & 5 have filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.61 of 1999 for partition and injunction. In the Second Appeal filed against the preliminary decree, this Court remanded the matter and observed as follows:

“In view of the peculiar circumstances, which crept in this case pendente lite, consequent upon the death of the original plaintiff and that too after she having allegedly executed a Registered will of her share in the suit properties in favour of her two daughters, who are the appellants herein, necessarily the trial Court has to consider those aspects. For that purpose alone, the matter has to be remitted back to the trial Court for permitting the plaintiffs to get the plaint amended suitably in this regard and the contesting defendants shall be permitted to file additional written statement. Whereupon, necessary issues have to be framed only with regard to the validity or otherwise of the Registered will executed by the original plaintiff in favour of her two daughters D1 and D2. After taking evidence and hearing both sides, in the event of the Court holding that the said Registered will is a valid one, then, the share of the original defendants D1 and D2, viz., Lakshmi and Rajammal would get enlarged and a preliminary decree shall be passed superseding the earlier preliminary decree shall be passed superseding the earlier preliminary decree as otherwise, the original preliminary decree itself shall hold good. Accordingly, the parties shall appear before the learned II Additional District Munsif, Erode on 21.11.2012. Registry is directed to send back the original records to the said Court immediately.”

3.After the remand, the petitioner filed an application under Order 8 Rule 9 of the Civil Procedure Code seeking for permission to file an additional written statement. In the affidavit filed in support of the said petition, the petitioner sought to include some other property. The application filed by the petitioner is against the scope of the remand. That apart, in paragraph no.9 of the order, the trial Court has stated that the petitioner has filed the present application after getting several adjournments for conducting the trial. The trial Court rightly found that the present application has been filed by the petitioner only to drag on the proceedings. When the prayer sought for in the application is against the scope of the remand, the trial Court has rightly dismissed the application.

4.In these circumstances, I find no error or irregularity in the order passed by the trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

22.04.2015

M.DURAIWAMY,J.
va

To

The II Additional District Munsif,
Erode.

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