

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2016

CORAM

The Hon'ble Mr.Justice K.K.Sasidharan

C.R.P.(PD)No.1349 of 2016

and

C.M.P.No.7580 of 2016

- 1.S.Manoharan
2. S.Sundra Kumar
3. Mrs.Rukmani
4. Mrs.Pankajam
5. Mrs.Vasantha
6. S.M.Madhukar

...Petitioners

Vs.

1. Mrs.Seethalakshmi
2. Mrs.Sakunthala
3. Mrs.V.Chandra
4. S.Ravindran

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order passed by the learned I Additional District and Sessions Judge, Coimabtoe, made in I.A.No.577 of 2015, in O.S.No.23 of 2013, dated 19.01.2016.

For Petitioners : Mr.M.R.Thangavel
For Respondents : Mr.A.Thiyagarajan

ORDER

The respondents filed an Application before the trial Court in I.A.No.577 of 2015, invoking Order VIII, Rule 9 CPC. The trial Court allowed the said Application, notwithstanding the objection raised by the petitioners. The Order, dated 19.01.2016, in I.A.No.577 of 2015, is challenged in this Civil Revision Petition, at the instance of the defendants in O.S.No.23 of 2013, on the file of learned I Additional District and Sessions Judge, Coimbatore.

2. The learned counsel appearing on behalf of the petitioners submitted that, there is no provision, permitting the plaintiffs to file a reply statement, and as such, the trial Court was not correct in allowing the Application in I.A.No.577 of 2015. According to the learned counsel, proper reasons were not given by the respondents, in the Application in I.A.No.577 of 2015, to receive the subsequent pleadings, as contemplated under Order VIII, Rule 9 CPC. The learned trial Judge, therefore, was not correct in allowing the Application.

3. The learned counsel for the respondents, while justifying the order passed by the trial Court, contended that the petitioners herein made certain remarks in the written statements and as such, the respondents were correct in objecting the same, by filing Application under Order XIII Rule 9 CPC, as otherwise, those allegations would remain unchallenged.

4. The respondents filed a Suit in O.S.No.23 of 2013, praying for a decree of declaration that the Will, dated 18.02.2004 and 21.04.2006 and the Cancellation Deed, dated 21.04.2006, are null and void, and for a decree, directing division of the suit property into 8 equal shares and allotment of four shares to them. While defending the Suit, the petitioners in the written statement alleged that Thiru.A.Somasundaram, predecessor-in-interest, has given consent for placing reliance on the Will in I.A.No.125 of 2010, in O.S.No.210 of 1986, and as such, the respondents are not entitled to challenge the correctness of the Will now. There are certain other vital defences taken by the petitioners in the written statement. It was only to explain certain circumstances and allegations made by the petitioners in the written statement, the respondents filed the Application in I.A.No.577 of 2015.

5. The additional pleadings filed by the respondents, invoking Order XIII, Rule 9 CPC., indicates that they have explained the circumstances, under which, the Application in I.A.No.125 of 2010, in O.S.No.210 of 1986 was filed, and the manner, in which, the matter was conducted by their counsel. In fact, the respondents have gone to the extent of issuing notice to their erstwhile counsel to give consent for change of vakalath. In short, it was only to state their response with regard to the new averments found in the written statement, the respondents have filed the Application in I.A.No.577 of 2015. The learned trial Judge, taking into account the plaint originally filed and the written statement filed by the petitioners, rightly allowed the Application in I.A.No.577 of 2015. There is no error or illegality in the said Order, warranting interference, by exercising the jurisdiction under Article 227 of the Constitution of India. I am, therefore, of the view that the impugned order deserves to be upheld.

6. The learned counsel for the petitioners submitted that the Suit is now posted for filing additional written statement on 10 November, 2016. The learned counsel wanted extension of time for filing additional written

statement. The petitioners are granted time till 05 December, 2016, for filing additional written statement.

7. The Civil Revision Petition is dismissed with the above observation. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

07.11.2016

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Index : Yes/No
Internet ; Yes/No

To

The I Additional District and Sessions Judge,
Coimabtores,

K.K.Sasidharan,J.,

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