

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2016

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

C.R.P. (PD) No.1565 of 2016

and

C.M.P.No.8440 of 2016

1.Backiyalakshmi
2.Santhamani

.... Petitioners

Versus

1.Dhamodharasamy
2.Rangammal
3.Muruganandham

.... Respondents

Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and final order dated 03.12.2015 in I.A. No.420 of 2015 in O.S. No.803 of 2007 on the file of the III Additional District and Sessions Judge, Coimbatore.

For Petitioners : Mr.L.Mouli

ORDER

This revision challenges the order of learned III Additional District and Sessions Judge, Coimbatore, passed in I.A. No.420 of 2015 in O.S. No.803 of 2007 on 03.12.2015.

2. Heard learned counsel for petitioners.

3. The petitioners/plaintiffs have preferred O.S.No.803 of 2007 seeking partition of the suit property in five equal shares.

4. By way of I.A.No.420 of 2015 in O.S.No.803 of 2007, the first respondent/third defendant sought permission to file an additional written statement. Such application was allowed.

5. Learned counsel for petitioners submits that the suit is of the year 2007 and the plaintiffs have filed O.S.No.803 of 2007 seeking partition while the defendants are their mother and brothers. In the written statement of D1 and D2, they contended that the husband of D1 and father of D2 had executed a registered Will in their favour. The third defendant, other brother, had in his original written statement contended that there was no such Will. However, the first respondent/third defendant had moved I.A.No.420 of 2015 towards filing additional written statement. It is the contention of the learned counsel that having admitted in his original written statement that there was no Will, the first respondent/third defendant cannot be permitted to contend the existence thereof by way of an additional written statement.

6. In the original written statement of the first respondent/third

defendant there is a denial of the execution of the Will, whereas by way of additional written statement he seeks to inform the existence thereof. This cannot be read to mean that the first respondent/third defendant was going back of his admission but can only be seen as his taking of a contradictory stand, which is permissible.

7.The Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

07.06.2016

vga

To

The III Additional District and
Sessions Judge, Coimbatore.

C.T.SELVAM, J.

vga

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