

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **27.09.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

**C.R.P.(P.D.) Nos.3048 and 3049 of 2016 and
CMP.No.15420 of 2016 in CRP(PD)No.3048 of 2016**

Deivasigamani

...Petitioner in both CRPs

versus

1.C.P.Subramaniam @ C.P.Muthusamy Gounder

2.Kannammal @ R.Kavitha

...Respondents in both CRPs

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal order dated 10.10.2015 passed in I.A.Nos.606 and 607 of 2015 respectively in O.S.No.38 of 2011 on the file of the Subordinate Judge, Perundurai.

For Petitioner : Mr.T.Shanmugam

COMMON ORDER

The petitioner filed applications in I.A.No.606 of 2015 to reopen the case and I.A.No.607 of 2015 to recall P.W.1. for further cross examination. The applications were filed after the conclusion of trial. The applications were dismissed by the learned Trial Judge. Feeling aggrieved, the petitioner is before this Court.

2. The learned counsel for the petitioner submitted that certain questions with regard to the possession of the property was not put to P.W.1 and that was the reason for filing applications for re-opening the case and re-calling P.W.1 for further cross examination.

3. The respondents filed a suit for partition in O.S.No.38 of 2011. The suit was contested by the petitioner by filing written statement. The petitioner has taken up a contention that there was an oral partition in 1981 and as such, the respondents are not entitled to a preliminary decree for partition.

4. The first respondent was examined as P.W.1. The petitioner initially cross examined P.W.1 on 02.06.2014. The cross examination was completed on 09.03.2015. Thereafter, evidence on the side of the petitioner was recorded. It was only after posting the matter for arguments, the petitioner filed applications for re-opening the case and recalling P.W.1 for further cross examination.

5. The petitioner took about nine months to complete the cross examination of P.W.1. It is not the case of the petitioner that he has not pleaded about his exclusive possession of the property pursuant to

an oral partition in his written statement. The petitioner has failed to cross examine P.W.1 in the light of the specific contention taken by him in the written statement that the property has already been partitioned. There is no question of re-calling P.W.1 for the purpose of further cross examination after the completion of trial. The reasons given by the petitioner for reopening and recalling P.W.1 were considered by the learned Trial Judge and the applications were rightly dismissed. I do not find any error or illegality in the said orders warranting interference by this Court.

6. In the up shot, I dismiss the Civil Revision Petitions. No costs. Consequently, connected miscellaneous petition is closed.

27.09.2016

Index:Yes/No

svki

To
The Sub-Court, Perundurai.

K.K.SASIDHARAN, J.

(svki)

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