

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2016

CORAM

THE HONOURABLE Mr.JUSTICE K.K.SASIDHARAN

CRP (PD) No.2792 of 2016
and CMP.No.14244 of 2016

Narayanamoorthy

.. Petitioner

Vs

1.Sekar

2.Kowsalya Rani

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order of the learned District Munsif, Krishnagiri, dated 06.06.2016 in I.A.No.20 of 2016 in O.S.No.20 of 2011.

For Petitioner : Mr.V.Nicholas
For Respondents : Mr.J.Hariharan

ORDER

The petitioner, in a suit for partition, filed an application in I.A.No.20 of 2016 in O.S.No.20 of 2011, before the trial Court, not to permit the second respondent to cross-examine the first respondent, who was examined as PW1. The application was dismissed by the trial Court. Feeling aggrieved, the petitioner is before this Court.

2. The learned counsel for the petitioner contended that the second respondent was initially set *ex-parte*. Subsequently, the *ex-parte* order was set aside. Thereafter, the second respondent wanted to cross-

examine PW1. According to the petitioner, the suit in question is a collusive suit between the respondents 1 and 2, and as such, it would not be legally permissible to allow the second respondent to cross-examine PW1. The learned counsel further submitted that the trial Court failed to consider the background facts and dismissed the application.

3. There is no dispute that the first respondent filed a suit for partition against the petitioner and the second respondent. It is also a matter of record that the second respondent was earlier set *ex-parte* and subsequently, order was set aside with notice to the petitioner.

4. The petitioner has not taken up a contention in the counter affidavit filed in the application to set aside the *ex-parte* order, that the second respondent should not be permitted to cross-examine PW1, in case the *ex-parte* order is set aside. The order passed by the trial Court setting aside the *ex-parte* order has become final.

5. The second respondent is the second defendant in the suit. Even if the second respondent is not opposing the prayer made by the first respondent in the suit, still she being a party, is entitled to cross-examine the witness. Merely because the second respondent has filed a written statement supporting the case of the first respondent, it cannot be said that she should not be permitted to cross-examine PW1. The learned trial Judge considered this aspect and rightly dismissed the application in I.A.N.20/2016 in O.S.No.20 of 2011.

6. I do not find any error or illegality in the order passed by the trial Judge warranting interference by exercising the revisional jurisdiction under Article 227 of the Constitution of India.

In the upshot, I dismiss the Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is closed.

ds

20.09.2016

K.K.SASIDHARAN,J
ds

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