

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **14.11.2016**

CORAM:

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

C.R.P.(P.D.) Nos.730 and 2123 of 2016,
CMP Nos.3747 and 6839 of 2016

1.S.Kandasamy
2.K.S.Kumarasamy
3.S.Shanmugam
4.S.Velusamy
5.P.Damodaran

...Petitioners in both CRPs

versus

R.Chellammal

...Respondent in both CRPs

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 30.11.2015 made in I.A.Nos.649 and 652 of 2014 in O.S.No.637 of 2011 on the file of V Additional District and Sessions Judge, Coimbatore.

For Petitioners : Mr.M.Liagat Ali

For Respondent : Mr.D.R.Arunkumar

COMMON ORDER

The respondent filed a suit for partition in O.S.No.637 of 2011. The suit was resisted by the petitioners by filing written statement. The petitioners, long after the conclusion of trial filed an application in I.A.No.652 of 2014 for reopening and I.A.No.649 of 2014 to recall

P.W.1 for further cross examination. The applications were opposed by the respondent. The learned Trial Judge dismissed the applications. Feeling aggrieved, the petitioners are before this Court.

2. The learned counsel for the petitioners contended that the respondent released her right in the schedule property by executing Ex.B5. The respondent, is therefore, not entitled to a decree for partition. According to the learned counsel, there is yet another document marked as Ex.B8, which is a Settlement Deed, dated 14.06.2004, in and by which, the respondent settled the property in favour of her husband. The learned counsel contended that it was only to put certain questions to the respondent as P.W.1, the petitioners filed the applications to recall her for further cross examination. The learned counsel contended that the respondent received considerable amount from the petitioners and executed the Release Deed. It was only to bring out the falsity of the case pleaded by the respondent, the petitioners filed the interlocutory applications. The learned Trial Judge was therefore not correct in dismissing the applications.

3. I have also heard the learned counsel for the respondent.

4. The respondent instituted a suit in O.S.No.637 of 2011 for partition. The suit was contested by the petitioners by filing written statement, wherein, a contention was taken that in view of the Release Deed, dated 14.06.2004, the respondent is not entitled to a share in the suit property.

5. The respondent was examined as P.W.1. Thereafter, the petitioners examined three witnesses. It is a matter of record that through D.W.3, Ex.B8 dated 14.06.2004 was marked. Through the said document, the respondent settled the property in favour of her husband.

6. The order passed by the learned Trial Judge indicates that it was only after posting the matter for arguments, the petitioners filed the applications to reopen the evidence and to recall P.W.1.

7. The learned counsel for the petitioners contended that the petitioners wanted the Court to compare the signature of the

respondent found in Exs.B5, B8 with the document dated 31.05.2004, in which, the respondent signed as a witness. The said submission is countered by the learned counsel for the respondent by contending that the petitioners earlier filed an application for expert opinion and it was dismissed by the learned Judge. The said order has become final.

8. The petitioners have cross-examined P.W.1. It is a matter of record that the petitioners have produced the document in Ex.B8 before the Trial Court and marked it through D.W.3. There is no question of summoning the respondent for the purpose of proving the falsity of the case with regard to Exs.B5 and B8. The petitioners, ought to have cross examined P.W.1 at the earliest point of time, in view of the fact that they were in possession of the xerox copy of the document marked as Ex.B8.

9. The learned Trial Judge considered the background facts and rightly dismissed the applications. I do not find any error or illegality in the orders warranting interference by exercising the revisional jurisdiction under Article 227 of the Constitution of India.

10. In the up shot, I dismiss the Civil Revision Petitions. No costs. Consequently, connected miscellaneous petitions are closed.

14.11.2016

Index : Yes/No
svki

To

The V Additional District and Sessions Court,
Coimbatore

K.K.SASIDHARAN, J.
(svki)

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