



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2016

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) .No.632 of 2016(PD)

and

C.M.P. (MD) .No.2854 of 2016

Padma

... Petitioner

Vs.

1.Damayanthi
2.Minor Keerthika
3.Minor Raja Darshana
4.Minor Kavya
[The minors represented by their
mother, the first respondent the
natural guardian]

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.NO.380 of 2015 in O.S.No.27 of 2011 dated 18.02.2016 on the file of the Subordinate Court, Kovilpatti.

For Petitioner

:Mr.F.X.Eugene

ORDER

This civil revision petition has been filed to set aside the decreetal order dated 10.12.2015 passed in I.A.NO.380 of 2015 in O.S.No.27 of 2011 dated 18.02.2016 by the file of the Subordinate Court, Kovilpatti.

2.The petitioner is the defendant. The respondents filed a suit for partition. The petitioner/defendant filed written statement on 09.06.2011 and contesting the suit. Whiles, the petitioner filed I.A.No.380 of 2015 for recalling P.W1 for further cross examination.

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3.According to the petitioner, her earlier Advocate was 94



years old and therefore, he could not cross-examine P.W.1 for a long time. After change of vakalath, the present Advocate pointed out that some important questions were not asked and advised the petitioner to recall P.W.1. The respondents opposed the said application. The learned Judge, considering all the facts and materials on record, dismissed the application filed by the petitioner. Against the said dismissal order dated 18.02.2016, the present civil revision petition is filed.

4.The learned counsel for the petitioner submitted that the learned Judge ought to have seen that even though the respondent had cross-examined P.W.1 in full, due to age factor, her previous counsel did not ask certain important questions. He further submitted that the petitioner has pointed out the questions have to be put to P.W.1. He further submitted that the learned Judge ought to have seen that the respondents filed a suit for partition, without any joint family properties. The petition for recalling P.W.1 can be allowed at any stage in the interest of justice. He further submitted that the learned Judge failed to consider the balance of convenience and if any prejudice caused to the respondents, the same can be compensated by the Court.

5.I have heard Mr.F.X.Eugene, learned counsel appearing for the petitioner and carefully perused the entire materials on record.

6.From the materials, it is seen that the suit in O.S.No.27 of 2011 was filed on 11.02.2011. The petitioner did not appear and an ex-parte order was passed. On filing the petition by the petitioner, the said order was set aside on 11.01.2012. The petitioner took more than 1 ½ years to cross-examine P.W.1. Subsequently, the petitioner filed application for recalling P.W.1 and the same was allowed. The petitioner cross-examined P.W.1 and the plaintiff's side evidence was closed. Subsequently, the petitioner filed another application for recalling P.W.1 and the same was allowed. On 14.07.2014, the petitioner cross-examined P.W.1 and thereafter, it was posted for petitioner's side evidence on 18.07.2014. The petitioner did not produce any witness on that day and therefore, the evidence on behalf of the petitioner was closed and it was posted for arguments. At that time, the petitioner filed application for reopening the case to let-in evidence on her behalf. The said application was allowed. The petitioner examined two witnesses as D.W.1 and D.W.2 and her evidence was closed and suit was posted for arguments. At that stage, the petitioner filed application for recalling P.W.1 for further cross-examination. From these materials it is clear that the only intention of the petitioner is to prolong the case.

<https://hcservices.ecourts.gov.in/hcservices/> 7.In the circumstances, the learned Judge considered all the materials and dismissed the application by giving cogent and valid reasons. There is no irregularity or infirmity in the order passed



by the learned Judge, warranting interference by this Court. No costs. Consequently, the connected C.M.P is also closed.

Sd/-

Assistant Registrar(AS)

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/TRUE COPY/

Sub Assistant Registrar

To
The Subordinate Court,
Kovilpatti.

+1 cc to Mr. F.X. Eugene, Advocate, Sr.No.15864

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JM/GSV-PM/13.04.2016/3P-3C

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