



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P(MD)No.61 and 70 of 2016(PD)
and

C.M.P. (MD).282 of 2016

in CRP. (MD).69 of 2016

1.Mercy

2.M.S.Sudhaker

.. Petitioners in both petitions

Vs.

1.Muthu, S/o.Samydass
Samydass (died)

2.Usha

3.Hema

4.Latha

5.Murugan

6.Murugesan

7.Ramalingam

8.Chelinmary

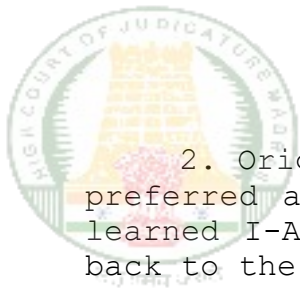
.. Respondents in both petitions

COMMON PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the fair and decretal orders dated 01.10.2015 and made in I.A.Nos.247 and 248 of 2015 in O.S.No.98 of 2005 by the learned Additional District Munsif, Eraniel.

For Petitioner : Mr.K.P.Narayanakumar
in both petitions

COMMON ORDER

The revision petitioners 1 and 2 are the defendants 9 and 10 in the suit. It appears that they are absolutely third parties in the suit in O.S.No.98 of 2005 and on their application they have been implead subsequently. The plaint was subsequently suitably amended. The first respondent is the plaintiff in the suit, whereas the remaining respondents 2 to 8 are the defendants. It appears that the first respondent/plaintiff had filed the above said suit for partition and separate possession of his 1/5th share in the plaint A-Schedule property and to set aside the sale deeds bearing Nos.2036, 2235, 2236, 2132 of 1997 on the file of the Eraniel Sub-Registrar regarding the 1/5th share of the plaintiff's in the B-Schedule property and also sought the relief on mesne profits till the date of taking delivery of the 1/5th share in the suit properties.



2. Originally the suit was decreed and the defendants in the suit had preferred an appeal in A.S.No.102 of 2011. After hearing both sides the learned I-Additional Subordinate Judge, Nagercoil, had remanded the Suit back to the trial court for fresh disposal.

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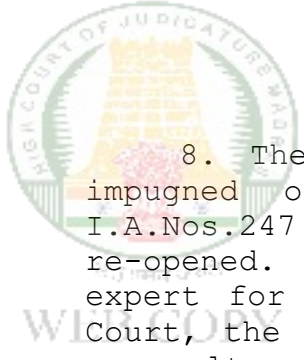
3. Under these circumstances, the revision petitioners were impleaded as defendants 9 and 10 in the suit. During the pendency of the suit, two applications in I.A.Nos.247 and 248 of 2015 were taken out by the revision petitioners for reopening the suit and also for the examination of the hand writing expert, only for the purpose of marking the expert's opinion, which was already available on the file of the Court. Those two applications were dismissed by the trial court on the ground that the expert's opinion was received by the trial Court as early as on 07.08.2015, and after passing of more than one month i.e., on 15.09.2015, the petitioners had filed the above said two applications for reopening and for the examination of the expert. The trial court has also observed that since the High Court had directed to dispose of the above said suit within a period of three months, it was under the impression that the two applications were filed only for the purpose of procrastinating the trial proceedings. Only on the sole ground those two application were dismissed.

4. Challenging the impugned order dated 01.10.2015, these two revision petitions have been filed by the petitioners, who are the defendants 9 and 10 in the suit.

5. Heard Mr.K.P.Narayanakumar, learned counsel appearing for the petitioners and perused the grounds of the revision Petitions as well as the impugned order and after taking into consideration of the related facts and circumstances this Court finds that these two revision petitions can be disposed of at the threshold, as the notice to the respondents does not require as there is a direction of this Court to dispose of the suit within a specific period.

6. It is noted that the trial was already completed and the suit stood posted for arguments. Mr.K.P.Narayanakumar, learned counsel for the petitioners has adverted to that the expert opinion, which is very much available on records of the trial court is necessary to substantiate the case of the petitioners and unless they are permitted to mark the expert opinion for the purpose of proving their case, they would be put to irreparable hardship and they would not be able to get fair justice from the hands of the trial court.

7. This Court has also found that as afore stated only on the sole ground of belated filing of these two petitions, for re-opening and examining of the expert, the relief sought for by the petitioners was rejected by the trial court. It is absolutely perverse in nature and therefore this Court is of opinion that by allowing these two applications neither the plaintiff nor the defendants in the suit would get prejudiced in any way.



8. Therefore these Civil Revision Petitions are allowed and the impugned order dated 01.10.2015 is set aside. The petitions in I.A.Nos.247 and 248 of 2015 are also allowed. The suit is ordered to be re-opened. The petitioners are permitted to examine the handwriting expert for the purpose of marking expert opinion. As directed by this Court, the earlier order stands remained intact in other aspects without any alteration. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To

- 1.The Principal District Munsif cum Judicial Magistrate, Eraniel.
- 2.The Additional District Munsif, Eraniel.

+1cc to Mr.K.P.Narayanakumar, Advocate SR.NO.3623

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