

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.03.2017**

CORAM:

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

C.R.P.(P.D.) No.2695 & 2696 of 2010 and
MP.No.1 of 2010

M/s.Aashirwad Health & Education Trust
 rep. by its Managing Trustee,
 P.R.Krishnakumar
 Pathanjaliपुरी (Post),
 Thadagam (Via),
 Coimbatore - 641 108.

...Petitioner in both CRPs

Vs

1. Pachaiaammal
 2. S.Ayyasamy Gounder
 3. A.Dhanasubbulakshmi @ Dhanalakshmi
 4. A.Kanageswari
 5. A.Saradamani
 6. A.Murugeswari
 7. A.Yuvaraj
 8. Lakshmi
 9. Deivathal

...Respondents in both CRPs.

Prayer:- Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decretal order dated 23.12.2009 made in I.A.Nos.641 and 642 of 2009 in O.S.No.337 of 2006 on the file of the Additional District Court, (Fast Track Court No.I) at Coimbatore.

For Petitioner : Ms.P.T.Asha
 For R1 : Mr.S.Karthkei Balan

COMMON ORDER

The first respondent filed a suit for partition before the learned Additional District Court at Coimbatore in O.S.No.337 of 2006. The suit was contested by the petitioner and the respondents 2 to 9 by filing written statement.

2. The first respondent, long after the conclusion of the evidence filed interlocutory applications in I.A.Nos.641 and 642 of 2009 to reopen the matter and to recall D.Ws.1 and 2 for further cross examination. The applications were opposed by the petitioner. The learned trial Judge by way of a very brief order allowed the interlocutory applications. Feeling aggrieved, the 9th respondent in the respective interlocutory applications is before this Court.

3. The learned counsel for the petitioner contended that on an earlier occasion, the petitioner filed an application to reopen the evidence. The application was dismissed by the trial Court. The related civil revision petition was dismissed by this Court, by confirming the order passed by the trial Court. According to the learned counsel, it was only after the completion of trial and posting the matter for arguments, the first respondent filed the interlocutory applications and that too after a period of one year and four months. According to the learned counsel, in view of the earlier order passed in CRP Nos.775 and 776 of 2009, the trial Judge should not have reopened the matter for further evidence.

4. The learned counsel for the first respondent contended that it was only to put certain questions with respect to the claim made by the first respondent in the civil suit, the applications in question were filed to reopen and recall the witnesses. According to the learned counsel, no prejudice would be caused to the petitioner by summoning the witnesses for further cross examination.

5. The suit in O.S.No.337 of 2006 was filed by the first respondent for partition.

The suit was filed on 03 July 2006. The defendants filed written statement on 20 September 2006. The petitioner herein filed an interlocutory application before the trial Court in I.A.No.454 of 2008 for re-opening the matter and recalling P.W.1 for further evidence. The application was dismissed by the trial Court. The order was upheld by this Court.

6. It is a matter of record that only after a period of one year and four months the first respondent filed the applications to reopen the matter and to recall D.W.1 and D.W.2 for further cross examination. When there is an order passed by this Court on an earlier occasion in the very same suit dismissing the application to reopen and recall witness, the Court should have considered the spirit of the said order before allowing the subsequent application by another party for reopening and recalling witnesses. The reasons given by this Court in the earlier order dated 01 September 2009 in CRP Nos.775 and 776 of 2009 would bind even other parties to the suit. The learned Judge without considering the background facts and more particularly the order passed by this Court on 01 September 2009 in the civil revision petitions, allowed the application filed by the first respondent.

7. The affidavit filed in support of the interlocutory applications does not contain any reason much less justifiable reason to recall the defence witnesses for further cross examination. The fact that the counsel failed to put certain questions cannot be a reason to recall witnesses for cross examination. This aspect was not considered by the learned trial Judge.

8. I am therefore, of the view that the impugned order passed by the trial Court is liable to be set aside.

9. In the result, the order dated 23 December 2009 is set aside. The interlocutory applications in I.A.Nos. 641 and 642 of 2009 are dismissed.

10. In the upshot, I allow these civil revision petitions. No costs. Consequently, connected miscellaneous petition is closed.

11. The suit is of the year 2006. The learned trial Judge is directed to dispose of the suit as expeditiously as possible and in any case, within a period of three months from the date of receipt of a copy of this order.

23.03.2017
(1/2)

gms

To

The Additional District Court, (Fast Track Court No.I) at Coimbatore.

K.K.SASIDHARAN,J.

gms

C.R.P.(P.D.) No.2695 & 2696 of 2017**23.03.2017****Memo in CRP (PD) No.2695 & 2696
of 2010****K.K.SASIDHARAN, J.**

The memo is filed to record legal representatives of second respondent. In view of the relationship of the parties with the deceased respondent, memo is accepted. The parties who are already on record are recorded as the legal representatives.

23.03.2017
(2/2)

gms