

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.141 & 142 of 2014
and M.P.No.1 of 2014

1.A.Vimala
2.A.V.P.Kalaiselvi

.. Petitioners
in both CRPs

Vs.

1.M.Latchumi @ Alamelu
2.M.Gopu @ Gopi
3.S.M.Rathinavelu

.. Respondents
in both CRPs

COMMON PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the fair and decretal order dated 18.11.2013 made in I.A.Nos.201 and 202 of 2013 in O.S.No.88 of 2010 on the file of the II Additional District Court, Pondicherry.

For Petitioners : Mr.W.M.Abdul Mujeed
for M/s.G.Sumitra

For Respondents : Mr.T.M.Naveen
for Mr.K.P.Jotheeswaran

COMMON ORDER

The Civil Revision Petitions are filed against the fair and decretal order dated 18.11.2013 made in I.A.Nos.201 and 202 of 2013 in O.S.No.88 of 2010 on the file of the II Additional District Court, Pondicherry.

2. The petitioners are the plaintiffs and respondents are the defendants in O.S.No.88 of 2010 on the file of the II Additional District Court, Pondicherry. The petitioners filed the said suit for partition against the respondents. In the suit, the third respondent filed written statement on 14.06.2011 and the same was adopted by the respondents 1 and 2 and are contesting the suit. Trial commenced and the petitioners have let in evidence and closed their side evidence. On behalf of the respondents, D.W.1 was examined in chief. When the suit was posted for cross examination of D.W.1, the first petitioner filed I.A.Nos.201 and 202 of 2013 under Section 151 of C.P.C., to re-open and re-call of P.W.1.

3. According to the petitioners, at the stage of cross examination of D.W.1, the petitioners sent a legal notice to the

respondents and third parties in respect of moratandy property. The second respondent sent a reply dated 04.06.2012 by Registered Post with Acknowledgement Due (RPAD) admitting the right of the petitioners and he is ready to divide the property and the third respondent also acknowledged the same. In the circumstances, it is necessary to re-open the case and mark the said reply sent by the second respondent through P.W.1.

4. The second respondent filed counter affidavit and denied all the averments made by the petitioners and submitted that the petitioners earlier filed I.A.Nos.573 and 574 of 2012 on 10.09.2012 for the same relief. The said applications were allowed on 09.10.2012. At that time, the petitioners did not seek permission of the Court to file the document now to be marked. The petitioners are not entitled to file present applications. The second respondent did not send any reply letter dated 04.06.2012 and the same is a fabricated document created for the purpose of filing the applications. The second respondent further submitted that the properties mentioned by the petitioners are already sold to their knowledge during the life time of the father of the respondents and petitioners.

5. The learned Judge, considering all the averments made in the affidavit, counter affidavit, materials available on record and the fact that the petitioners already filed I.A.No.573 of 2012 and the same was allowed on 09.10.2012, dismissed the applications holding that the second application is not maintainable, the document sought to be marked is subsequent to the filing of the suit, there is no pleadings with regard to this document and it is no way connected to the suit property.

6. Against the said order of dismissal dated 18.11.2013 made in I.A.Nos.201 and 202 of 2013, the present Civil Revision Petitions are filed by the petitioners.

7. The petitioners filed I.A.Nos.201 and 202 of 2013 to re-open the case and re-call of P.W.1 for marking the reply dated 04.06.2012 alleged to have been sent by the second respondent to the learned counsel for the petitioner. The second respondent filed counter affidavit and denied sending the reply dated 04.06.2012 and also submitted that the said document is a fabricated one created for the purpose of filing the present applications.

8. Heard the learned counsel for the petitioners as well as the respondents and perused the materials available on record.

9. It is seen from the materials available on record that earlier petitioners have filed I.A.No.573 of 2012 to re-open the case. The said application was filed on 10.09.2012 and the same was allowed on 09.10.2012. At that time, the petitioners did not seek permission to produce and mark the document dated 04.06.2012. The second respondent has denied sending any such reply. The petitioners have not given reason for not filing the document earlier. The learned Judge has rightly considered all the above facts and dismissed the applications by giving cogent and valid reason. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 18.11.2013.

10. For the above reason, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14.11.2017

Index : Yes/No
dm

V.M.VELUMANI, J.

dm

To

The II Additional District Judge,
Pondicherry.



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