

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.06.2017**

CORAM:

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

C.R.P.(N.P.D.) No. 2217 of 2012
and M.P.No.1 of 2012

1.Ellappa Gounder
2.Adishesan
3.Arumugam

...Petitioners

Vs

Kaladevi @ Kalayarasi

...Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India against the order passed in I.A.No.32 of 2012 in A.S.No.22 of 2006 dated 27.03.2012 on the file of the Principal District Judge, Villupuram dismissing the application to let in rebuttal evidence.

For Petitioners : Mr.V.V.Sairam
For Respondent : Mr.P.B.Balaji

ORDER

This Civil Revision Petition is directed against the order dated 27 March 2012 in I.A.No.32 of 2012 in A.S.No.22 of 2006 dismissing the application filed by the petitioner to lead evidence in rebuttal, taking into account the additional evidence adduced by the respondent in the said appeal.

2. Heard the learned counsel for the petitioners. I have also heard the learned counsel for the respondent.

3. The respondent filed a suit in O.S.No.8 of 2004 before the learned Subordinate Judge, Tindivanam. It was a suit for partition. The trial Court dismissed the suit on merits. The decree was taken up on appeal before the Principal District Judge, Villupuram in A.S.No.22 of 2006. Before the District Court, the respondent filed an application for receiving additional documents. The application was entertained by the learned District Judge, resulting in remanding the matter for fresh consideration by the trial Court. The said judgment was challenged by the petitioners in CMA No.2813 of 2008. This Court, allowed the Civil Miscellaneous Appeal, by judgment dated 26 July 2011. The learned appellate Judge, pursuant to the judgment and decree in CMA No.2813 of 2008, allowed the respondent to adduce evidence. The petitioners cross examined the witness with respect to the additional documents. Thereafter, the petitioners filed the application in I.A.No.32 of 2012 to permit them to lead rebuttal evidence. The application was dismissed by the learned trial Judge, primarily on the ground that there was no permission given by the High Court in the judgment in CMA No.2813 of 2008 for adducing further evidence on the side of the petitioners, being the respondents in the first appeal.

4. There is no dispute that opportunity was given to the respondent to lead evidence in A.S.No.22 of 2006. It is also true that the petitioners have cross examined the witness examined on the side of the respondent. When

there is additional evidence adduced by the respondent, naturally, the petitioners should also be given opportunity to adduce rebuttal evidence. The learned District Judge adopted a literal interpretation of the judgment in CMA No.2813 of 2008 and the same resulted in dismissal of the application in I.A.No.32 of 2012.. I am, therefore, of the view that the impugned order is liable to be set aside.

5. In the result, the order dated 27 March 2012 is set aside. The application in I.A.No.32 of 2012 is allowed. The learned Principal District Judge, Villupuram, is directed to permit the petitioners to cross examine their witnesses in A.S.No.22 of 2006.

6. Since the appeal is of the year 2006, the learned Principal District Judge, Villupuram is directed to dispose of the same as expeditiously as possible and in any case, within a period of four months from the date of receipt of a copy of this order.

The Civil Revision Petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

09.06.2017

gms

To

The Principal District Judge, Villupuram.

K.K.SASIDHARAN,J.

gms

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