

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4376 of 2010

M.P.No.1 of 2010

1.Periya Thambi
2.Ayyadurai
Petitioners

Vs.

1.Sellavel
2.Samuvel
3.Sellammal
4.Devi
5.Amulraj
6.Manjula @ Nirmala
7.Latha
8.Kanjana
9.Maniyammal
10.Chinnayal
11.Rasayal
12.Manoharan
13.Nirmala
14.Visalakshi
15.Velmurugan
16.Maneksha
17.Premkumar
18.Murugan
19.Gayathiri

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 16.09.2010 made in A.S.No.8 of 2010 on the file of the Sub Court, Bhavani.

For Petitioners : Mr.R.Marudhachalamurthy

For R1 & R2 : Mr.M.V.Venkateshan

For R3 to R19 : Given up

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 16.09.2010 made in A.S.No.8 of 2010 on the file of the Sub Court, Bhavani.

2. The petitioners are defendants 1 and 2, respondents 1 and 2 are the plaintiffs and respondents 3 to 19 are defendants 3 to 19 in O.S.No.311 of 2007 on the file of the First Additional District Munsif, Bhavani and petitioners are appellants and respondents are respondents in A.S.No.8 of 2010 on the file of Subordinate Court, Bhavani. The respondents 1 and 2 filed the said suit for declaration and permanent injunction. By the judgment and decree dated 04.02.2010, the said suit was decreed. Against the said judgment and decree, the petitioners herein filed A.S.No.8 of 2010. Their main contention in the appeal is that Trial Court failed to properly consider the documents filed and marked on their behalf. Trial Court, having mentioned in paragraph 6 in page 22 of its judgment the details of the Exs.B2 to B20 marked by the petitioners, had

erroneously held that petitioners filed Exs.B1 to B3. In view of this contention, by the order dated 16.09.2010, the First Appellate Court has directed the Trial Court to send all the immaterial records and unmarked documents to the First Appellate Court on or before 22.09.2010.

3. The petitioners filed the present civil revision petition challenging the said order dated 16.09.2010 made in A.S.No.8 of 2010.

4. Heard the learned counsel appearing for the petitioners and respondents 1 & 2 and perused the materials available on record.

5. According to the petitioners, the error committed by the Trial Court cannot be cured in the First Appellate Court at appeal stage. The matter has to be remanded to the Trial Court for deciding the issue. This contention is without merits. The First Appellate Court has to satisfy that whether the petitioners have filed and marked Exs.1 to 20 and Trial Court erroneously held that the petitioners have marked only three documents. For that purpose, the First Appellate Court directed the Trial Court to send for immaterial records and unmarked documents. The First Appellate Court can

come to a different conclusion. The First Appellate Court has power to set aside and

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modify the judgment of the Trial Court and also has power to remand the matter to Trial Court.

6. For the above reason, the order directing the Trial Court to send all the immaterial records and unmarked documents does not suffer from any irregularity or illegality.

7. In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. The learned Subordinate Judge, Bhavani, is directed to dispose of the suit as expeditiously as possible in any event not less than four months from the date of receipt of a copy of this order.

Index: Yes/No

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To

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The Subordinate Judge,

Bhavani.

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