

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2017

CORAM

THE HONOURABLE DR. JUSTICE P.DEVADASS

C.R.P.(NPD). No.3948 of 2013 and
M.P.No.1 of 2013

1. C.Visalakshi

2. A.Saraswathy ...
Respondents/Plaintiffs/Petitioners

Versus

C.Palaniswamy ...
Petitioner/Defendant/Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 21.08.2013 in I.A.No.681 of 2013 in O.S.No.228 of 2009 on the file of First Additional Sub Court, Coimbatore.

For Petitioner : Mr.N.Anand Venkatesh
For Respondent : Mr.R.T.Doraisamy

ORDER

This revision arises out of allowing I.A.No.681 of 2013 in O.S.No. 228 of 2009 on the file of the First Additional Sub Court, Coimbatore to recall P.W.1 for further examination of the defendant.

2. Plaintiffs 1 and 2 and the defendant are daughters and son of late Chinnaya Gounder. Chinnaya Gounder is no more. Now, his daughters (plaintiffs) and son (defendant) are fighting for partition of the properties. The sisters of the defendant have laid up the suit seeking division of properties by metes and bounds.

3. The defendant filed written statement resisting the suit that his sisters are not entitled to share. Subsequently, he filed another written statement pleading that certain items of properties have been omitted in the suit. Subsequently, he had filed another written statement taking a specific stand that the properties are ancestral properties and as their father died after 1976, the sisters/plaintiffs will not have the benefit of the newly amended provisions putting the daughters and sons on the same platform and the share of the plaintiffs is not $\frac{1}{3}$ but of $\frac{1}{6}$ if they were entitled to a share.

4. The plaintiffs have filed reply statement. It was received on record. Plaintiffs' evidence was over. At this juncture, in view of the filing of the additional statement by the defendant, filed I.A to recall P.W.1 to subject him to further cross examination. It was allowed by the trial Court.

5. Aggrieved, the plaintiffs have directed this revision.

6. The learned counsel for the revision petitioners/plaintiffs would contend that the defendant is not consistent in his plea. Now, because of the allowing of the recall petition, P.W.1 has to undergo the ordeal of further cross examination which in the facts and circumstances, is not warranted.

7. The learned counsel for the respondent/defendant would repel the said submissions and would reiterate the very same contentions which were put before the trial Court.

8. I have anxiously considered the rival submissions, perused the impugned order and the materials on record.

9. It is a partition suit. Additional pleadings have been filed by the respondent/defendant and reply statement has been filed by the plaintiffs, in the light of the above, need has arose for the defendant to further cross examine P.W.1. Necessarily P.W.1 has to go to the witness box. But, that is not the end of it. Even then, the plaintiffs have every reason to put forth or thwart any filling up of lacuna etc.,

Dr.P.DEVADASS,J

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by the defendant under the garb of further cross examination of P.W.1. I do not find any irregularity in the impugned order passed by the trial Court.

10. Thus, this revision fails and it is dismissed. However, no costs. Consequently, connected miscellaneous petition is closed.

07.03.2017

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To
The First Additional Sub Court, Coimbatore.

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