



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(MD)No.152 of 2017 (PD)
& C.M.P.(MD)No.589 of 2017

Ceceilkumar Sunder (Died)

1.Rita Sunder, W/o.Late. Ceceilkumar Sunder
2.Lita Sunder, D/o.Late. Ceceilkumar Sunder
3.Golda Sunder, S/o.Late Ceceil Kumar Sunder .. Petitioners

Vs.

1.Lusy Rani, W/o.Devasahayam
2.Daisy Sundarraaj, D/o.A.E.Sundarraaj
3.Vimala Padmini, D/o.A.E.Sundarraaj
4.Beemarajan Sunder, S/o.Late. A.E.Soundarraaj
5.Prince Nayagam Sundar, S/o.A.E.Sundarraaj
6.Stella Gnanaprakasam, W/o.Gnanaprakasam
7.Indira Rajadurai, W/o.Rajadurai .. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 08.11.2016, passed in I.A.No.586 of 2015 in O.S.No.98 of 2010, on the file of the I Additional Subordinate Court, Tirunelveli.

For Petitioners : Mr.V.Perumal

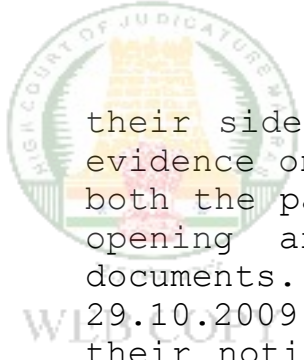
ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 08.11.2016, passed in I.A.No.586 of 2015 in O.S.No.98 of 2010, on the file of the I Additional Subordinate Court, Tirunelveli.

2. Facts of the case:-

(i) The petitioners are plaintiffs 2 to 4 and respondents are defendants in the suit in O.S.No.98 of 2010 on the file of the I Additional Subordinate Court, Tirunelveli. The petitioners along with the husband of the first petitioner viz., Cecil Kumar Sundar filed the suit for declaration to declare that the registered partition deed, dated 20.09.1993, is not binding on the petitioners in respect of the suit schedule property.

(ii) The respondents filed written statement and oral evidence and marked documents and closed the evidence on



their side. The respondents also let in evidence and closed the evidence on their side. After completion of evidence on behalf of both the parties, the petitioners filed I.A.No.586 of 2015 for re-opening and examining additional evidence and to mark some documents. According to the petitioners, they issued notice dated 29.10.2009 to the respondents and the respondents sent reply to their notice. The respondents did not mark the said reply. The petitioners through their Advocate called upon the respondents to produce the reply. The respondents filed a Memo stating that they have not sent any reply and denied it. Therefore, in order to prove the case of the petitioners, the said reply is necessary and prayed for allowing the application.

(iii) The fourth respondent filed counter affidavit and the same has been adopted by the respondents 1 to 3 and denied the averments made in the affidavit. According to the respondents, they have not sent any such reply. The first petitioner examined herself as P.W.1 and subsequently, took number of adjournments for letting in additional evidence. On 19.08.2014, the counsel for the petitioners stated that no further evidence on behalf of the petitioners. The respondents let in evidence and took number of adjournments to cross-examine their witnesses. After the evidence was closed on behalf of both sides, the petitioners filed the present application only to drag on the proceedings. The respondents ought to have stated details of the person, who has to be examined as a witness and documents, in which, they sought to be marked.

(iv) The learned I Additional Subordinate Judge, Tirunelveli, upon considering the averments mentioned in the affidavit and the counter affidavit and also considering the materials available on record, dismissed the application holding that the petitioners have not given valid reason for letting in additional evidence.

3. Against the said order of dismissal dated 08.11.2016, the petitioners have come out with the present Civil Revision Petition.

4. The learned counsel for the petitioners submitted that the learned I Additional Subordinate Judge, Tirunelveli, dismissed the application in an arbitrary manner, without application of mind. He further submitted that the learned I Additional Subordinate Judge failed to see that the petitioners in paragraph 11 of the plaint have stated about the notice and reply. In the reply, the respondents have admitted the execution of Will, which is vital to prove the case of the petitioners. By re-opening and permitting the petitioners to let in further evidence, it will not cause any prejudice to the respondents.

<https://hcservices.courts.gov.in/hcservices/> In support of his submissions, the learned counsel for the petitioners relied on the judgment of the Hon'ble Apex Court reported in 2011 (11) SCC 275 [K.K.Velusamy Vs. N.Palanisamy],



wherein it has been held that the Court in appropriate cases can exercise its discretion to permit re-opening of evidence and/or recalling of witnesses for further examination/cross-examination after evidence led in by parties is concluded and arguments have commenced or even when arguments have concluded and case has been reserved for judgment, as there is no provision in the regard in C.P.C. after deletion of Order 18 Rule 17-A.

6. I have considered the submissions of the learned counsel for the petitioners and perused the materials available on record.

7. From the materials available on record, it is seen that the petitioners filed the application for re-opening after completion of evidence by both the parties. The petitioners are seeking to mark the reply, notice dated 29.10.2009 sent by the respondents. The learned counsel for the petitioners had contended that in the plaint itself they have stated about the notice and reply. In the circumstances, the petitioners ought to have filed the said reply, along with plaint or at the earliest and marked the same through their evidence. The contention of the learned counsel for the petitioners that the respondents did not mark the said document and therefore, the petitioners are in a compelling situation to mark the said documents, cannot be accepted. The petitioners have not given any reason for not filing the reply earlier and not marking the same through their witness or when the respondents were in the witness box. In the circumstances, there is no irregularity or illegality in the order dated 08.11.2016, passed in I.A.No.586 of 2015 in O.S.No.98 of 2010, by the learned I Additional Subordinate Judge, Tirunelveli.

8. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The I Additional Subordinate Judge,
Tirunelveli.
+1cc to M/s.V.PERUMAL, Advocate in SR. No.3973
Copy to : The Section Officer,
Record Keeper, VR Section,
Madurai Bench of Madras High Court, Madurai.
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