IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CRP (PD) No.1393 of 2018
and CMP.No.7422 of 2018

1. K.M.Balasubramaniam
2. B.Vaitheeswaran ... Petitioners

-Vs-

M.Amsaya ... Respondent

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and final order passed by the learned Principal District Munsif, Erode made in I.A.No.288 of 2018 in I.A.No.953 of 2017 in O.S.No.233 of 2015 dated 16.03.2018.

ORDER

The revision petitioners herein are the father and son, who as plaintiffs have laid a suit for declaration of title in O.S.No.233 of 2015 on the file of District Munsif, Erode, in which the respondent herein is the third defendant.

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1.2. The broad case of the the plaintiffs as disclosed in the plaint is that the property originally belonged to a certain Muthusamy Gounder, the father of the first plaintiff and the defendants, that in the year 1990, during the life time of Muthusamy Gounder, the defendants, the sisters of the first revision petitioner have given up their claim in the suit property

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and revision petitioners were allotted shares in it. Be that as it may, when the plaintiffs/revision petitioners decided to raise a loan by mortgaging the suit property, the bank authorities insisted for the consent of the defendants for sanctioning the loan, and when the plaintiffs approached the defendants in this regard, they showed reluctance and hence the suit in O.S.No.233 of 2015 is laid.

1.3. The suit was decreed exparte on 08.07.2015. For setting aside the exparte decree and also to condone the delay intervened, the third defendant has filed necessary application. In the affidavit filed in support of the said application in I.A.No.953 of 2017, the third defendant would contend that she has not received the suit summons and hence has no knowledge about the hearing of the case.

1.4. This was opposed by the revision petitioners and would contend that the suit summons were received for the defendants. It appears in the summons-copy that was returned to the Court, the defendants have affixed their thumb impressions.

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1.5. This now requires to be ascertained whether the defendants have actually received the summons. To enable the proof of her assertion, the third defendant has filed an application in I.A.No.288 of 2018, for comparing the thumb impression available in the suit summons with the one taken from her in the Court. The trial Court allowed this application, challenging which, the plaintiffs have come forward before this Court.

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2. The learned counsel for the revision petitioners would argue that the trial Court should have waited till the examination, at least of the process server, who served the summons, before taking up for consideration the application in I.A.No.288 of 2018.

3. This Court, at the outset is not impressed with the line of argument of the petitioners. Where the respondent has taken upon herself the burden of establishing that the suit summons have not been served, to discharge the said burden she must have the full opportunity. In this regard, it must be remembered that even an opinion of a finger print expert is only an evidentiary piece of document, and the trial Court ought to weigh it by assigning proper evidentiary value, and appreciate it in the totality of the circumstances presented before it. If so looked, this Court cannot consider that allowing I.A.No.288 of 2018 at this stage is premature in character. In the meantime, if the respondent is required to produce any other evidence, the same may also be received and the final call can be taken after receiving the report of the expert.

4. In conclusion, this Court does not find any merit in the matter and the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.04.2018

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Index : Yes / No

Speaking Order / Non-speaking Order

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N.SESHASAYEE,J.,

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CRP (PD) No.1393 of 2018

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16.04.2018

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