



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P(MD)No.346 of 2018 (PD)

G.Saminathan ... Petitioner/9th Respondent /2nd Defendant

Vs.

1.Kalimuthu ...1st Respondent/Petitioner /4th Defendant
2.M.Pitchaiammal
3.M.Chinnappa
4.M.Rajendran
5.A.Santhanam
6.A.Lalitha
7.A.Raja
8.A.Radhika ... Respondents 2 to 8/Respondents 2 to 7/Plaintiffs
M.Venkataschalam (died)
9.R.Rajiv Gandhi
10.V.Muniammal
11.M.Murugesan
12.V.Veeramuthu
13.V.Selvi ...Respondents 9 to 13/Respondents 10 to 14/
Defendants 3, 5 to 8

PRAYER: Civil Revision Petition filed under Article 227 of the constitution of India, to set aside the fair and decreetal order dated 17.11.2017 passed in I.A.No.519 of 2017 in O.S.No.64 of 2011 on the file of the learned Principal Subordinate Judge, Thanjavur and to allow the same.

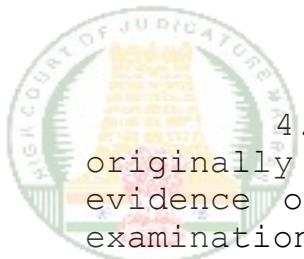
For Petitioner : Mr.P.Ganapathi Subramanian

ORDER

This Civil Revision Petition has been filed challenging the order dated 17.11.2017 passed in I.A.No.519 of 2017 in O.S.No.64 of 2011 on the file of the learned Principal Subordinate Judge, Thanjavur.

2. Heard the learned Counsel for the petitioner and perused the materials available on record.

3. The Revision Petitioner is the second defendant in the suit. The suit in O.S.No.64 of 2011 was filed on the file of the Principal Subordinate Court, Thanjavur, for partition and separate possession of 5/6th share of the plaintiffs and the third defendant and for other reliefs.



4. It appears that the fourth defendant in the suit originally was examined as D.W.1 and the Court suo-motu eschewed the evidence of D.W.1 as the said witness did not appear for cross-examination for sometime. Now, the fourth defendant has filed an interlocutory application in I.A.No.519 of 2017 in O.S.No.64 of 2011 under Section 151 of Code of Civil Procedure to permit him to give evidence as D.W.1 and to appear for cross-examination. This petition was opposed by the second defendant who are the ninth respondent in the petition filed before the Lower Court. It is not in dispute that the fourth defendant filed a proof affidavit and marked Ex.B.1 to Ex.B.4. Though the fourth defendant was permitted to depose, his evidence was earlier eschewed as he did not turn up for cross-examination. Following the judgment of this Court in the case of 2009 (4) TLNJ 217 (Civil) D.F.Philips Vs. Damayanthi Kailsam and others, wherein, this Court has categorically held that there is no provision for eschewing the incomplete evidence of a witness and that the evidentiary value or probative value of such evidence is a matter to be considered by the Trial Court, the Trial Court allowed the petition and permitted the petitioner/fourth defendant, to depose further as D.W.1.

5. In a suit for partition, giving further opportunity to the contesting defendant to lead evidence in the course of trial is within the power of Court. In this case, the fourth defendant has given reason for his non-appearance for cross examination earlier. The trial court, after analysing the facts and circumstances of the case in proper perspective, has rightly allowed the petition. I do not find any perversity or illegality in the order of the Trial Court permitting the fourth defendant to depose further.

6. In the result, the Civil Revision Petition is dismissed and the order dated 17.11.2017 passed in I.A.No.519 of 2017 in O.S.No.64 of 2011 on the file of the learned Principal Subordinate Judge, Thanjavur is confirmed. No costs.

Sd/-
Assistant Registrar(Crl. side)

/True Copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge,
Thanjavur

C.R.P(MD)No.346 of 2018 (PD)
22.02.2018

rm

JM/KK/SAR 4/20.03.2018/2P/2C

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