



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON: 26.09.2018
DELIVERED ON : 24.10.2018
CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

WEB COPY

C.R.P. (NPD) (MD) No.1787 of 2015
and
M.P. (MD) No.1 of 2015

1.Tamilselvan
2.Ramamoorthy
3.Sakthivel
4.Sivakumar

.. Petitioners

Vs.

1.S.Ramadurai
2.R.Ambika

.. Respondents

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the order and decree dated 04.08.2015 made in I.A.No.772 of 2015 in O.S.No.574 of 2012 on the file of the Additional District Munsif Court, Karur.

For Petitioner : Mr.R.Saravanan
For Respondents 1 and 2 : Mr.K.Govindarajan

ORDER

Heard Mr.R.Saravanan, learned counsel appearing for the petitioner and Mr.K.Govindarajan, learned counsel appearing for the respondents 1 and 2.

2.This petition has been filed to set aside the order and decree dated 04.08.2015 made in I.A.No.772 of 2015 in O.S.No.574 of 2012 on the file of the Additional District Munsif Court, Karur.

3.The petitioners herein are the defendant and the respondents herein are the plaintiff in the suit. The respondents herein filed a suit in O.S.No.574 of 2012 seeking for a prayer of permanent injunction against the petitioners herein. The petitioners herein filed a petition in I.A.No.772 of 2015 seeking permission to examine one Saroja as D.W.1 before examining the respondents. The petition was dismissed by the trial Court. Against the order of dismissal, the petitioners have filed this revision petition.

4.The case of the petitioners is that father of the petitioners' namely, MuthuKrishnan and the grandfather of the first respondent Vaiyapuri were brothers. The said Vaiyapuri has two daughters namely, Saroja and Govindammal. The first respondent is the son of Saroja. The said Saroja has filed a suit in O.S.Nos.292 of 1995 and 400 of 2000 regarding the same property and the appeals were filed and they were dismissed by the Hon'ble Supreme Court.



5. On the side of the petitioners, it is stated that the suit in O.S.No.315 of 1996 was filed and was decreed in favour of the petitioners. The said Saroja and Govindammal executed a sale deed on 06.09.2010 which contain false particulars. In the previous suits, the said Saroja was examined as a witness. In the earlier suit itself, the said Saroja has admitted the right of this petitioner over the suit property. Hence, examination of that Saroja as a witness before the examination of the petitioners is to be permitted.

6. On the side of the respondents, it is stated that already respondents side witnesses were cross examined by the petitioners. The petitioners without examining themselves as witnesses with some ulterior motive tried to examine Saroja who is the mother of the first respondent.

7. On the side of the petitioners, it is stated that the mother of the first respondent executed a sale deed and the case filed by the mother of the first respondent was dismissed and the suit is for bare injunction and to prove the case, it is necessary that the said Saroja was to be examined as a witness before the examination of the petitioners. In support of his contention, the Judgment passed by this Court in the case of Ramasami Gounder and three Others v. Muthayammal and another is cited.

8. On the side of the respondents, it is stated that the petitioners cannot insist upon the respondents to give evidence on their behalf.

9. Records perused. A perusal of the records reveals that the said Saroja has filed a suit in O.S.Nos.295 of 1995 and 40 of 2000 and those suits were dismissed up to the Hon'ble Supreme Court. The contention of the petitioners is that the said Saroja admitted the right of the petitioners over the suit property in the suit is filed by her. If it is true, the petitioners can mark the certificate copies of the deposition of the Saroja in the above said cases. The said Saroja is a third party to the suit and the petitioners are to be examined before the examination of third persons. Examining Saroja after the examination of the petitioners will not be prejudice to the case. In the above circumstances, there is no necessity for the examination of a third person before the examination of the parties. Hence, there is nothing sufficient enough to interfere the order passed by the lower Court. This Civil Revision Petition is dismissed. No Costs. Consequently, M.P.(MD) No.1 of 2015 is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/



To

The Additional District Munsif,
Karur.

WEB COPY

- 1 CC TO Mr.R.SARAVANAN , ADVOCATE IN SR No. 91336.
- + 1 CC TO Mr.K.GOVINDARAJAN , ADVOCATE IN SR No.91721.
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- DS SKN SAR3 22 11 2018 3P 4C

C.R.P. (PD) (MD) No.1787 of 2015

24.10.2018