



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (PD) (MD) No.1436 of 2016

and

C.M.P. (MD) No.7035 of 2016

1.Gnanam
2.A.Meena Srivasthav
3.G.A.Balaji Rao
4.A.Krishnamoorthy ... Revision Petitioners/Petitioners/
Defendants

-vs-

N.Subba Rao ... Respondent / Respondent / Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order dated 04.04.2016 passed in I.A.No.35 of 2013 in O.S.No.583 of 2010 by the learned I Additional Subordinate Judge, Madurai.

For Petitioners : Mr.A.R.M.Ramesh
For Respondent : Mr.M.P.Senthil

ORDER

The defendants in O.S.No.583 of 2010 on the file of the First Additional Sub-Court, Madurai are the revision petitioners herein. It is a suit for partition. The defendants filed I.A.No.35 of 2013 seeking leave of the trial Court to file an additional written statement. The said I.A.No.35 of 2013 was dismissed by order dated 04.04.2016. Questioning the same, this Civil Revision Petition has been filed.

2.Heard the learned counsel on either side.

3.The learned counsel appearing for the revision petitioners submits that by way of abundance caution and to put the either side on notice, the plea was taken in the additional written statement pointing out that the suit was bad, since it suffers from the vice of partial partition.

4.This Court is of the view that this is more a legal plea and therefore, it can be taken at any point of time. The Court below was clearly not justified in dismissing I.A.No.35 of 2013 filed by the defendants.



5.The learned counsel appearing for the revision petitioner submits that the additional written statement was filed along with I.A.No.35 of 2013.

6.Since the order impugned in this Civil Revision Petition is being set aside, the said additional written statement shall be taken as additional pleading by the Court below.

7.Therefore, this Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The First Additional Subordinate Judge,
Madurai.

+1cc to Mr.M.P.Senthil, Advocate Sr.No.78113

+1cc to Mr.A.R.M.Ramesh, Advocate Sr.No.78198

MYR

VB/KAK/SAR1/03.09.2018/2P/4C

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