

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

C.R.P.(PD)No.3345 of 2019

and

C.M.P.No.21849 of 2019

1.G.Keerthana

2.G.Harshini

... Petitioners

Vs.

1.Chinnammal

2.M.Gopal

3.Santhamani

4.Tamilselvi

5.V.N.Pathmanaban

6.Selvaraj

7.Karthika

8.K.Malathi

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 11.07.2019 made in I.A.No.316 of 2018 in O.S.No.473 of 2013.

For Petitioners : Mr.N.Manoharan

ORDER

This revision petition has been filed against the fair and decretal order passed in I.A.No.316 of 2018 in O.S.No.473 of 2013 dated 11.07.2019 by the II Additional Sub Court, Erode.

2.The revision petitioners are the plaintiffs before the trial Court, when they were minors, they filed the suit represented by their mother and natural guardian for partition against the respondents/defendants. In the said suit, the mother and next guardian of the revision petitioners/plaintiffs stood as P.W.1 and she deposed on behalf of the plaintiffs by way of examination in chief.

3.However, subsequently the petitioners after having become major, they decided to discharge their mother and natural guardian and next friend from representing them in the suit, accordingly, they filed I.A.No.365 of 2017 to discharge their mother and the said petition was allowed by the Court below on 30.08.2017. Therefore, as of now the suit is pursued only by the revision petitioners/plaintiffs.

4.In the aforesaid circumstances, these petitioners/plaintiffs filed the subject I.A.No.316 of 2018 to eschew the evidence already adduced by the P.W.1 that is the mother of the petitioner/plaintiff, as according to them, the said evidence is unwarranted or unnecessary in the context that, the petitioners themselves wanted to be the

witnesses on behalf of the plaintiffs i.e., for evidence and therefore, they wanted the evidence already made by P.W.1 i.e., the mother of the petitioners/plaintiffs have to be eschewed and accordingly, the said petition was laid, however, the same was rejected by the learned Judge through the impugned order, as against which, the present revision has been filed.

5.I have heard Mr.N.Manoharan, learned counsel for the revision petitioners, who would submit that, the mother stood as P.W.1 on behalf of the plaintiffs, subsequently when the plaintiffs themselves become major and their application to discharge their mother from the purview of the suit was allowed by the Court on 30.08.2017 and the suit is being pursued by the petitioners/plaintiffs as of now, the said evidence adduced by P.W.1, of course, in examination in chief as well as in cross examination may not be necessitated or unwarranted and that will hinder the prospects of the petitioners/plaintiffs to become witnesses to be examined for themselves and therefore, on that ground, they seek indulgence of this Court against the impugned order.

6.I have considered the said submission made by the learned counsel for the revision petitioners and I have perused the materials placed before this Court.

7.It may be the fact that, at the time of filing the suit, the petitioners/plaintiffs were minor, therefore they were represented by their mother and next friend and subsequently on their becoming major, they filed necessary application in I.A.No.365 of 2017 to discharge their mother, which was also allowed on 30.08.2017.

8.However, before that had happened, the mother was examined as P.W.1 on behalf of the plaintiffs and she deposed already in examination in chief and one of the defendants seems to have cross examined the P.W.1, therefore, the evidence adduced on behalf of the plaintiffs by P.W.1 has already been recorded, therefore, the said evidence need not be eschewed, in the opinion of this Court, definitely that would not be detrimental in the interest of the petitioners/plaintiffs.

9.If at all the petitioners/plaintiffs want to examine themselves on their behalf, it is open to them to make such a plea before the Court below and when such plea come from the petitioners/plaintiffs, certainly this Court feels that, the trial Court will allow the petitioners/plaintiffs to be examined for themselves as witnesses.

10.Therefore, the said petition i.e., I.A.No.316 of 2018 is undeserved. Therefore, this Court finds no infirmity in rejecting the said application by the Court below in the order impugned.

11.In that view of the matter, this Civil Revision Petition fails and hence the same is dismissed with the aforesaid observation. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sgl

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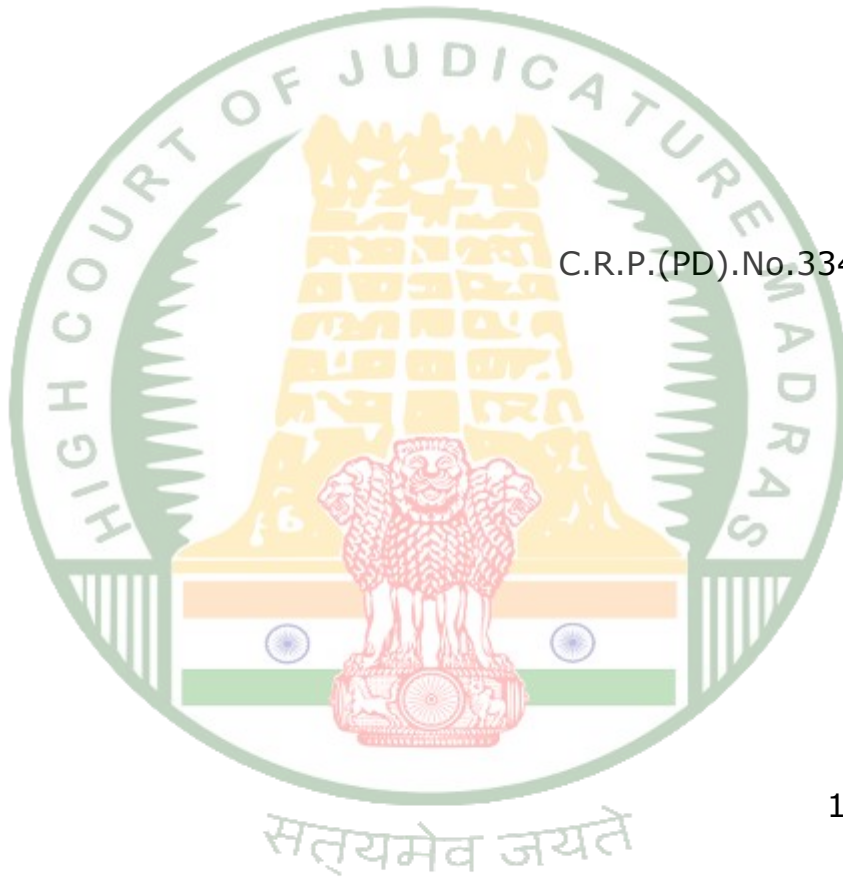
The II Additional Sub Court,
Erode.

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R.SURESH KUMAR, J.

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