

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P. PD 4327 of 2017

and

C.M.P. 20373 of 2017

1. T.Sathish

2. T.Raja

... Petitioners

Versus

1. S.Thangamuthu

2. T.Sathiyakeerthi

3. T.Parimala

... Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 13.09.2017 made in I.A. No.413 of 2017 in O.S.No.181 of 2012 on the file of the I Addl. District Judge, Erode.

For Petitioner : Mr.C.E.Pratap

For respondents : Mr.D.Selvaraju

ORDER

This Civil Revision Petition has been filed against the order allowing the application filed by the respondents/defendants to

receive the additional written statement.

2. The petitioner is the plaintiff. He has filed a suit for partition of suit schedule property, and also for consequential injunction. The 1st respondent herein is the 1st defendant in the Suit. Earlier, for non-filing of written statement, the defendants were set exparte in the year 2013. Thereafter, the defendants filed an application to set aside the exparte order, that was allowed on 12.03.2013, even thereafter, no written statement was filed. Finally, on 07.06.2013, the defendants have filed a written statement, wherein the defendants have raised the plea of non-joinder of necessary parties, and also stated that the suit properties are the absolute property of one Pongianna Gounder, during his life time, he has sold a part of the suit schedule property. Thereafter, the properties devolved upon one Sengoda Gounder, his son. The plaintiffs mother one Jayamani, daughter of Sengoda Gounder and grand daughter of Pongianna Gounder is not entitled for any share in the property. The 1st defendant, who is son of Sengoda Gounder and grand son of Pongianna Gounder alone is entitled to share in the suit schedule property.

3. After commencement of trial and examination of P.W.1,

an application has been filed by the defendants to receive additional written statement, in I.A. 514 of 2014, that application was allowed, and the additional written statement was received by the court below on 08.12.2014. Then, the evidence of P.W.1 completed on 26.12.2015.

4. Thereafter, P.W.2 was examined, and he was recalled at the instance of defendants 1 to 3, and his cross-examination was completed on 11.06.2016. After closing the plaintiffs evidence, the defendants did not appear for trial for many occasions and then, evidence was closed. After closing of evidence, the 1st defendant has filed an application to re-open the evidence and recall the defendants, it was allowed. Finally, his evidence was closed on 22.03.2017. After completion of trial on 24.07.2017, the suit was posted for arguments. At that time, the 1st defendant has filed the present application on 08.08.2017 to receive additional written statement stating that, on 23.02.1996, Pongianna Gounder, grandfather of 1st defendant, his son Sengoda gounder, Thangamuthu, 1st defendant son of Sengoda Gounder, and grandson of Pongianna Gounder, the 2nd defendant, have exchanged some portion of lands and through

the said exchange, he has got the land in R.S. No.85/4, an extent of 1.28 ½ acres. The above application has been filed after closing of evidence, and the suit is posted for arguments, in order to protract the proceedings. However, the Trial Court has allowed the application in a cryptic and non-speaking order only on the ground for giving an opportunity to putforth their case effectively and in the interest of justice. Now, challenging the same, the present Civil Revision Petition has been filed.

5. I have heard and considered the rival submissions made by learned counsel appearing for petitioners as well as learned counsel appearing for respondents and perused the materials available on record carefully.

6. The suit is for partition, and the Suit has been filed in the year 2012, wherein the defendants have filed their written statement contending that, the suit properties are exclusively belong to Pongianna Gounder. After his death, his father one Sengoda Gounder has inherited the suit properties, the plaintiffs, who are the legal heirs of one Jayamani, daughter of Sengoda Gounder, has no right over the suit schedule properties. Thereafter, an additional written statement was filed stating

that, at the time of marriage, plaintiffs' mother was given sufficient dowry and jewels, and when she fell ill, entire medical expenses were borne by the defendants for more than Rs.15 lakhs. They have also stated that, in the event of any share is being allotted, instead of giving property, an amount of Rs.1,00,000/- by cash can be given to plaintiffs. Thereafter, the trial was also concluded. At that stage, the present additional written statement has been filed raising a new plea as there is an exchange of properties between Pongianna Gounder, Sengoda Gounder and 1st defendant, by which he is having right in some of the suit properties, altogether, it is a new plea. That apart, that application has been filed belatedly, after 9 years, that too after closing of evidence, and the Suit is posted for arguments, the Trial Court without considering the plea, has simply allowed the application only on the ground to give an opportunity to the defendants to putforth their case. The Trial Court failed to consider the fact that, already an opportunity was given to the respondents/defendants. They have effectively utilised the opportunities. After completion of trial, the defendants have came up with a new plea, which itself not permitted. Hence, I am

of the considered view that, the application has been filed only to protract the proceedings. Hence, the order passed by the Court below is liable to be set aside. Accordingly, the Fair and decreetal order dated 13.09.2017 passed in I.A.No.413 of 2017 in O.S.No.181 of 2012, by the I Addl. District Judge, Erode is set aside.

7. In the result, this Civil Revision Petition stands allowed. Since the suit is pending from the year 2012, the Trial Court is directed to proceed with the trial, and conclude the trial and dispose the suit within a period of two months from the date of receipt of the copy of this order. No costs. Consequently, the connected Civil Miscellaneous Petition in C.M.P. 20373 of 2017 is closed.

10.12.2019

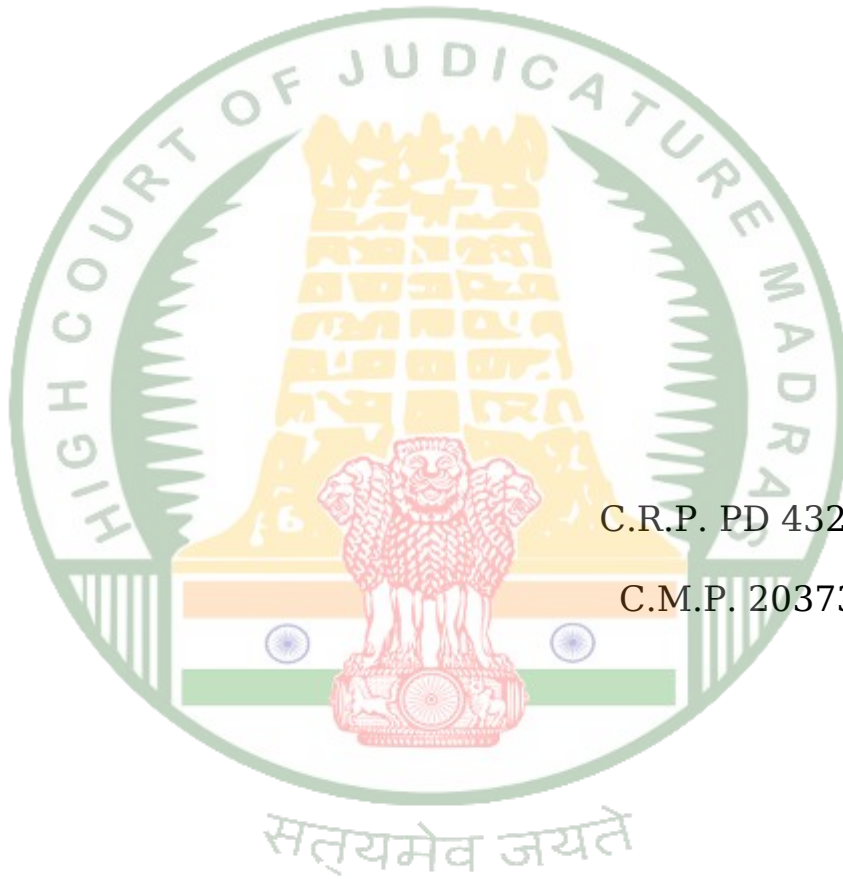
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Internet: Yes/No
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To

I Addl. District Judge,
Erode.

V.BHARATHIDASAN,J.

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