

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (PD) No. 3827 of 2019

and

C.M.P. Nos. 25236 of 2019

1. D. Mohanasundaram
2. D. Jayabal
3. Kumudavalli
4. G. Karunyasaravanan
5. R. Kavitha
6. N. Chandragandhi

... Petitioners

-Vs-

1. B. Lalithamani
2. R. Vimala
3. D. Balasundaram
4. M.K. Palanisamy
5. B. Ranganathan
6. V. Rajasingh Selvaraj

... Respondents

Prayer : Petition filed under Article 227 of the Constitution of India against the fair and decretal order of the learned IV Additional District and Sessions Judge, Coimbatore dated 03.08.2019 passed in I.A. No. 2 of 2019 in O.S. No. 553 of 2012.

For Petitioners : Mr. T. Venkatesh Kumar

ORDER

This Civil Revision Petition has been filed against the fair and decretal order made in I.A. No. 2 of 2019 in O.S. No. 553 of 2012 on the file of the learned IV Additional District and Sessions Judge, Coimbatore, by order dated 03.08.2019.

2. Before the trial Court, the plaintiffs / revision petitioners, who filed a suit for partition, filed the application to examine the cousin of the petitioners one Balasundharam, the third respondent therein, as a Court witness. Since the said application was dismissed through the impugned order, as against which, the present revision petition has been filed by the petitioners / plaintiffs.

3. Heard Mr. T. Venkatesh Kumar, learned counsel appearing for the revision petitioners and gone through the materials placed before this Court including the impugned order.

4. It is a suit for partition, where the trial was completed, after completion of examination of witnesses, it is posted for arguments.

At this juncture, this application had been filed on behalf of the plaintiffs to examine the third defendant who claimed to be the cousin of the plaintiffs as a Court witness. Having considered the same, the trial Court has rejected the same on two grounds namely that, once the evidence was closed and it is posted for arguments unless it is reopened for plausible reason, no witness can be called for. Secondly, the Court also rejected the application on the ground that, once the plaintiffs filed the suit, it is for them to prove the case based on their own evidence to let in before Court for consideration. In this regard at the stage of arguments, this kind of petition cannot be filed seeking the Court to examine D3 as a Court witness, therefore the said plea raised by the petitioners / plaintiffs was not accepted and it has been rejected.

5. Both the reasons stated by the learned Judge, in the considered opinion of this Court, are sustainable. The plaintiffs if at all want to prove any case on their behalf, they should have let in evidence on their own, they cannot seek for any evidence by examining anyone as Court witnesses, that too at the stage of arguments to reopen the evidence.

R. SURESH KUMAR, J.

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6. When that being the position, this Court is of the considered view that, there is absolutely no infirmity in the order impugned, hence it does not warrant any interference from this Court. Accordingly, the Civil Revision Petition fails and hence it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

27.11.2019

Index: Yes / No
Speaking order / Non speaking order

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To

The learned IV Additional District and Sessions Judge,
Coimbatore.

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