



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2019

CORAM :

THE HONOURABLE MRS.JUSTICE **S.RAMATHILAGAM**

CRP(MD) No.411 of 2019
and
C.M.P. (MD) No.2048 of 2019

1.Mahalakshmi
2.Maheswari

... Petitioners

vs.

1.Mahalingam
2.Bagavathi

... Respondents

PRAYER:- Civil Revision Petition filed the under Article 227 of the Constitution of India, to set aside the order dated 12.11.2018 made in I.A.No.305 of 2018 in O.S.No.271 of 2013 on the file of the I Additional Subordinate Judge, Nagercoil.

For Petitioners : Mr.G.Aravindan

ORDER

This Civil Revision Petition has been filed to set aside the order dated 12.11.2018 passed in I.A.No.305 of 2018 in O.S.No.271 of 2013 by the learned I Additional Subordinate Judge, Nagercoil.

2.The petitioners in I.A.No.305 of 2018 are the second and third defendants. The petitioners herein contended that the suit was filed by the plaintiff/first respondent herein for partition in respect of the plaint schedule property and the first and third defendants/petitioners herein have 1/4th right in the above said plaint schedule property and further, the first defendant, who is none other than the father of the defendants executed a settlement deed regarding the 1/4th share in the plaint schedule in favour of the second defendant/first petitioner herein. The first petitioner/second defendant contended that her father executed a sale deed in favour of her and the she came to find out the inadvertent error while preparing defendant side proof affidavit and hence, she is finding it very necessary to file her additional written statement about the settlement deed executed by her father and hence, the petition to receive the additional documents is filed by the petitioners.

3.The defendants in the said suit contended that they have taken one year time to file their written statement and if at all there is such document, they would have already mentioned in the statement filed at the earliest and the case was posted for the defendants side evidence and even for examination, the defendants took very long time, wherein, the evidence of the plaintiff was



closed and from 20.07.2018 onwards, the case was pending for the defendants side evidence.

4.After observing the written statement, the trial Court found that during the pendency of the suit, the father of the first petitioner herein executed a sale deed dated 12.12.2013 and hence, the trial Court contended that the contends and the validity of the said documents has to be proved only by way of trial. Since the father himself has filed the written statement, the said documents can be put very well by way of examination and at that stage, the written statement has not been considered by the trial Court and hence, the said petition is dismissed.

5.Heard the learned counsel for the petitioners.

6.The petitioners herein contended that the defendants were not aware of the execution of the settlement deed in favour of the petitioners. Since originally the written statement was filed by the deceased father, the petitioners came to know the facts of the said statement when the case was posted for defendants side evidence. Hence, it is necessary to file an additional written statement regarding the said settlement deed.

7.On perusal of the said documents, it is observed that during the pendency of the suit, the settlement deed dated 12.12.2013 was executed by the father of the first petitioner and hence, the settlement deed has to be proved during trial for the examination of the parties. Since the defendants have not stated anything regarding the same at the earlier stage, the case was posted for defendants side evidence and the same was also pending for a very long time and the petitioners can file the said documents and they can prove the same before the trial Court but at this stage, the additional written statement is not very much essential and it is for them to prove the said document by way of examining themselves before the Court.

8..In view of the above, there is no merit in this Civil Revision Petition and the same is dismissed and the order dated 12.11.2018 made in I.A.No.305 of 2018 in O.S.No.271 of 2013 on the file of the I Additional Subordinate Judge, Nagercoil, does not require any interference of this Court. The learned I Additional Subordinate Judge, Nagercoil is directed to dispose of the suit in O.S.No.271 of 2013 at the earliest and after disposal report the same before this Court. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T & P)

// True Copy //



The I Additional Subordinate Judge,
Nagercoil.

Copy to:-
The Section Officer,
Judicial section,
Madurai Bench of Madras High Court, Madurai.

+1CC TO MR.G.ARAVINTHAN, Advocate Sr. No. 50980

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TR (23.04.2019) 3P 4C