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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.07.2019

DELIEVRED ON : 28.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P (MD) No.1074 of 2019 (PD)

and

CMP (MD) .No.5822 of 2019

1.Thilagavathi

2.D.Salai Ammal

.. Petitioners/

Petitioners / Defendants 1 & 2

Vs.

1.Rajamanickam

2.Bema

3.Aruna

4.Yalini

5.Shoba

.. Respondents 1 to 5/

Respondents 1 to 5/ Plaintiffs

Pradeesan (died)

6.Murali

.. 6th respondent/

6th respondent / 4th defendant

7.State of Tamil Nadu,
rep. by the District Collector,
Tiruchirapalli.

8.The Sub Registrar,
Sub Registrar Office,
Thuraiyur.

9.Sangeetha Pradeesan

10.Minor Reya

11.Minor Dharshan

12.Bhuvaneshwari Raja

.. Respondents 7 to 12/

Respondents 7 to 12 / Defendants 5 to 10



(Respondents 2 to 4 are represented through their Power of Attorney the 1st respondent herein viz., Rajamanickam)

(Minor Respondents 10 & 11 are represented by their mother and guardian - 9th respondent herein viz., Sangeetha Pradeesan)

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order, dated 19.02.2019, passed in I.A.No.538 of 2018 in O.S.No.124 of 2012 by the learned III-Additional District cum Fast Track Court, Tiruchirappalli.

For petitioners : Mr.M.Ashok Kumar

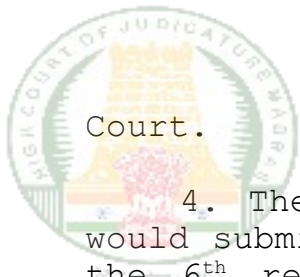
For 8th respondent : Mr.M.Murugan,
Government Advocate

ORDER

This civil revision petition has been filed by the revision petitioners / defendants 1 and 2 as against the order, dismissing the petition for reopening the case for defendants' side further evidence.

2. The respondents 1 to 5 herein / plaintiffs have filed the suit in O.S.No.124 of 2012 for partition, declaration and permanent injunction. When the matter was posted for defendants' side arguments, the petitioners/defendants 1 and 2 have filed I.A.No.538 of 2018 for reopening the case for defendants' side further evidence.

3. In the affidavit filed in support of the petition, the petitioners/defendants 1 and 2 have stated that based on the submission of the 1st respondent/1st plaintiff and 6th respondent/4th defendant that the 6th respondent / 4th defendant is the beneficiary of the Will dated 13.10.1954 and that the respondents 2 to 4 / plaintiffs 2 to 4 have executed a General Power of Attorney in favour of the 6th respondent / 4th defendant to sell the suit property, the first petitioner/first defendant has purchased the suit property from the 6th respondent / 4th defendant. In order to prove the above fact by letting further evidence on the side of the petitioners/defendants 1 and 2, the suit has to be reopened. The 1st respondent/1st plaintiff has refuted the same by contending that the defendants have been purposefully dragging on the matter by filing petitions after petitions. The Court below, after considering the facts and circumstances of the case, has held that the petitioners have not assigned any reason for not adducing the evidence at the earlier stage and that only to drag on the matter, the petitioners/defendants 1 and 2 have filed the petition. Challenging the said order, the petitioners/defendants 1 and 2 are before this



Court.

4. The learned counsel for the petitioners/defendants 1 and 2 would submit that in order to prove that based on the submission of the 6th respondent / 4th defendant that he has got the property through the Will, the petitioners/defendants 1 and 2 wanted to adduce further evidence on their side and the Court below, without considering the said aspect, has erroneously dismissed the same. In order to give one more opportunity to the petitioners/defendants 1 and 2 to prove their case, the Court below could have liberally considered and allowed the petition. But the Court below has failed to do so. Hence, this Court may set aside the impugned order and permit the petitioners / defendants 1 and 2 to adduce further evidence.

5. Heard the learned Government Advocate appearing for the 8th respondent / 6th defendant on the above submission made by the learned counsel for the petitioners.

6. Heard the learned counsel appearing for the parties and perused the records carefully.

7. Admittedly, in this case, the evidence on the side of the respondents 1 to 5 / plaintiffs was completed long back. After several opportunities, DW1 was examined on 21.11.2014. Again, after grant of several opportunities, 9th respondent herein / 10th defendant was examined as DW2 and he was cross-examined on 11.07.2018. After closing of the evidence, the matter was posted for arguments on 18.09.2018. At that time, the first petitioner / 1st defendant filed I.A.No.484 of 2018 for reopening the case, but subsequently the same was not pressed due to change of counsel. Thereafter, the petitioners / defendants 1 and 2 have filed the present petition for reopening the case for defendants' side further evidence. It could be seen that though the petitioners have been given number of opportunities, they have not utilized the same and the petitioners have purposefully dragged on the matter.

8. As rightly held by the Court below, the evidence cannot be reopened or recalled at the whims and fancies of the parties and for such reopening or recalling of the witness, the petitioners should assign sufficient reasons for not adding them at the earlier stage and also as to how and in what way, the proposed evidence would be relevant. The petitioners have not assigned any such reasons in the affidavit filed in support of the petition in I.A.No.538 of 2018. The petitioners does not even aver as to how many person they wanted to examine as further witness on their side in the petition. The non-assignment of reasons and bereft of particulars made in the petition in I.A.No.538 of 2018, would further strengthen that the intention of the petitioners is nothing but to drag on the matter. In view of the above, this Civil Revision Petition is liable to be dismissed at the stage of admission itself.



9. In the result, this Civil Revision Petition is dismissed.
No costs. Consequently, connected miscellaneous petition is also
dismissed.

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Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)

To

The III-Additional District Judge,
Fast Track Court,
Tiruchirappalli.

+1 CC to M/s.M. ASHOK KUMAR, Advocate (SR-83875[F] dated 28/08/2019

order made in
C.R.P (MD) No.1074 of 2019
28.08.2019

gcg

JMN(13.09.2019) 4P : 3C