

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.10.2020

PRONOUNCED ON : 11.11.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD).No.4244 of 2015

and

M.P.No.1 of 2015

1. Thimmaraya Reddy
2. Muni Reddy
3. Venkatasamy Reddy

... Petitioners/Defendants 1 to 3

Vs.

Gowrammal

... Respondent/Plaintiff

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal Order passed in I.A.No.369 of 2015 in O.S.No.13 of 2008 dated 12.08.2015 on the file of the Sub-Court at Hosur, Krishnagiri District.

For Petitioners : Mr.R.Jayaprakash

For Respondents : Mr.Karthikeyan
for Mr.V. Nicholas

ORDER

This Civil Revision Petition has been filed by the petitioners/defendants 1 to 3 against the dismissal of their application filed in I.A.No.369 of 2015 in O.S.No.13 of 2008 on the file of the Sub-Judge, Hosur, dated 12.08.2015.

2. The first respondent herein had filed a suit in O.S.No.13 of 2008 on the file of the Sub-Judge, Hosur, for the relief of partition and separate possession.

3. During pendency of the said suit, the defendants 1 to 3 had filed an application in I.A.No.369 of 2015 seeking permission of the court for filing additional written statement. The learned Trial court had dismissed the said application by the order dated 12.08.2015. Feeling aggrieved, the petitioners/ defendants 1 to 3 have filed the present Civil Revision Petition.

4. Heard Mr.R.Jayaprakash, learned counsel for the petitioners and Mr.Karthikeyan for Mr.V. Nicholas, learned counsel for the respondent.

5. The learned counsel for the petitioners has submitted that the petitioners herein are the brothers and the respondent is their sister. He further submitted that the respondent had filed a suit in O.S.No.13 of 2008 claiming 1/5th share in the suit properties based on the common compromise decree passed in O.S.Nos.13 and 59 of 1996 on the file of the Sub-Judge, Hosur dated 20.02.2001. He further submitted that by virtue of the partition deed executed in the year 1968 between the sons of Venkata Reddy viz., Thimmaraya Reddy, Munireddy and Venkatasamy Reddy and step brother Pilla reddy, the respondent/plaintiff is not entitled to any share in the suit properties. He further submitted that appraising the aforesaid facts, the petitioners had filed a written statement but only for the purpose of clarity, the petitioners had filed a petition seeking permission of the court for filing additional written statement, but the learned

Trial Court Judge without considering the aforesaid facts, had dismissed the said petition and hence, he prayed to allow this Civil Revision Petition and set aside the order passed by the trial court in I.A.No.369 of 2015 and allow the said petition and receive the additional written statement filed by the petitioners.

6. In support of the aforesaid contentions, the learned counsel for the petitioners relied upon the decision in ***Muthusamy Vs. Thangaraj, (2005) 4 MLJ 119.***

7. Per contra, the learned counsel for the respondent / plaintiff has submitted that in the main written statement, the petitioners herein had categorically admitted that as per the compromise decree passed in the suit in O.S.Nos.13 and 59 of 1996, the respondent and the petitioners were jointly allotted the properties, but in the proposed additional written statement, the petitioners had denied the right of the respondent. He further submitted that since in the original written statement, the petitioners had admitted the right of

the respondent/plaintiff, they are estopped from denying the right of the respondent. He further submitted that by way of additional written statement, the petitioners are trying to withdraw the admission which was made by them in the original written statement and the same is not permissible and therefore, he prayed to dismiss this Civil Revision Petition. He further submitted that in the earlier occasion, when the suit was posted for cross-examination of PW1, the petitioners herein did not turn up and consequently, an ex parte decree was passed thereafter, on the petition filed by them in I.A.No.630 of 2013, the ex parte decree was set aside and the suit has been posted for cross-examination of PW1 and at this stage, they have filed Transfer O.P before the District Court to transfer the said suit to the Additional District Judge and the said Transfer O.P was subsequently dismissed and thereafter they have filed an application in I.A.No.369 of 2015 seeking permission of the court to file an additional written statement. He further submitted that already they have filed an additional written statement on 20.10.2012 and after 6 years, that too, at part heard stage, the

petitioners again filed a petition to receive the second additional written statement only with a view to drag on the proceedings and taking into consideration of the aforesaid facts, the learned trial court has rightly dismissed the petition and in the said order, this court need not interfere and therefore, he prayed to dismiss the Civil Revision Petition.

8. A perusal of the typed set of papers filed by the petitioners shows that the respondent herein had filed a suit in O.S.No.13 of 2008 on the file of the Sub-court, Hosur, to divide the suit properties into five equal shares and allot one such share to her. According to her, as per the compromise decree passed in O.S.Nos.13 and 59 of 1996 on the file of the Sub-Court, Hosur, dated 20.02.2001, the suit properties were allotted to her and the petitioners herein jointly and hence, she is entitled to one-fifth share in the suit properties. The petitioners herein, after receipt of summons, entered appearance through an Advocate, and filed a written statement on 03.06.2009. In the said written statement, the petitioners herein/defendants have

categorically admitted that as per the compromise decree passed in the aforesaid suits dated 20.02.2001, the plaintiff and the defendants were jointly allotted the properties. Further they have pleaded that the plaintiff and the 4th defendant are entitled to 1/40th share each. So it is clear that they have admitted that the respondent/plaintiff is entitled to get a share in the suit properties, but they disputed only the ratio. In the additional written statement, they have averred that in view of the partition deed executed in the year 1968 between the sons of Venkata Reddy, the respondent/plaintiff is not entitled to any share in the properties which were allotted to the said sons of Venkata Reddy. So, it is clear that the petitioners are trying to withdraw the admission made by them in the main written statement with regard to right of the respondent/plaintiff. Further, in the affidavit filed in support of I.A.No.369 of 2015, it is simply stated that some of the important points were omitted at the time of filing written statement and hence, they need to file an additional written statement. They have not stated any reason for not raising the pleas

which now taken by them through the additional written statement in the main written statement itself.

9. It is seen from the counter filed by the respondent/plaintiff in I.A.No.369 of 2015 in O.S.No.13 of 2008 that this is the second application seeking permission for filing additional written statement. In the earlier occasion, they have filed an application in I.A.No.335 of 2012 seeking permission of the court for filing additional written statement and the same was allowed and thereafter, the suit was posted in the list on 20.09.2013 and the plaintiff was examined as PW1, but the petitioner herein did not turn up and hence an exparte decree was passed and thereafter, the petitioners had filed an application in I.A.No.630 of 2013 to set aside the exparte decree and the same was allowed and thereafter, the suit was posted for cross-examination on 31.01.2014 and again it was adjourned to 21.01.2014. On 21.01.2014, the petitioners have filed a petition to transfer the said suit to the Additional District Judge and subsequently, the said Transfer O.P was dismissed,

but they did not come forward to cross examine the plaintiff's side witness and hence, they were again set exparte on 17.07.2014 and on the application filed by them in I.A.No.551 of 2014, the exparte order was set aside and again, the matter was posted for cross-examination. On 25.02.2015, they have cross examined P.W.1 and thereafter, the matter was posted for defence side evidence. After taking several adjournments, they have filed an application in I.A.No.369 of 2015 seeking permission of the court for filing second additional written statement. The conduct of the petitioners would show that they have filed petition after petition only with a view to drag on the proceedings. The trial court, after taking into consideration of the aforesaid facts, had rightly dismissed the said petition. This court does not find any infirmity in the said order.

10. In *Muthusamy Vs. Thangaraj*, (cited supra), when the case was pending for examination of PW1 as part heard, the defendants had filed a petition seeking permission of the court for filing additional written statement. The trial court, considering the

facts of the said particular case, had allowed the said application. As against the same, the petitioners had filed a Civil Revision Petition before this court. Taking into consideration, in the additional written statement, the defendant had not abandoned the previous case, where as he wanted to add something more to the original written statement, which came to light after filing of the written statement and also the positive approach made by the trial court, this court did not interfere with the order of the trial court. But in this case, the facts are totally different. In this case, in the main written statement, the defendants had admitted the right of the plaintiff. Further, they had already filed one additional written statement and this is the second petition seeking permission of the court for filing second additional written statement. Through the second additional written statement, the defendants want to withdraw the earlier admission. Therefore, the aforesaid decision will not apply to the facts of this case.

11. As already pointed out, the petitioners filed petition after petition to drag on the proceedings. Taking into consideration of the aforesaid facts, the trial court had rightly dismissed the said petition. This Court does not find any irregularity or illegality in the said order. Hence, this Civil Revision Petition is liable to be dismissed.

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

11.11.2020

Index :Yes/No
Internet : Yes/No
Speaking / Non-speaking Order
gv

To

The Sub-Court,

Hosur,

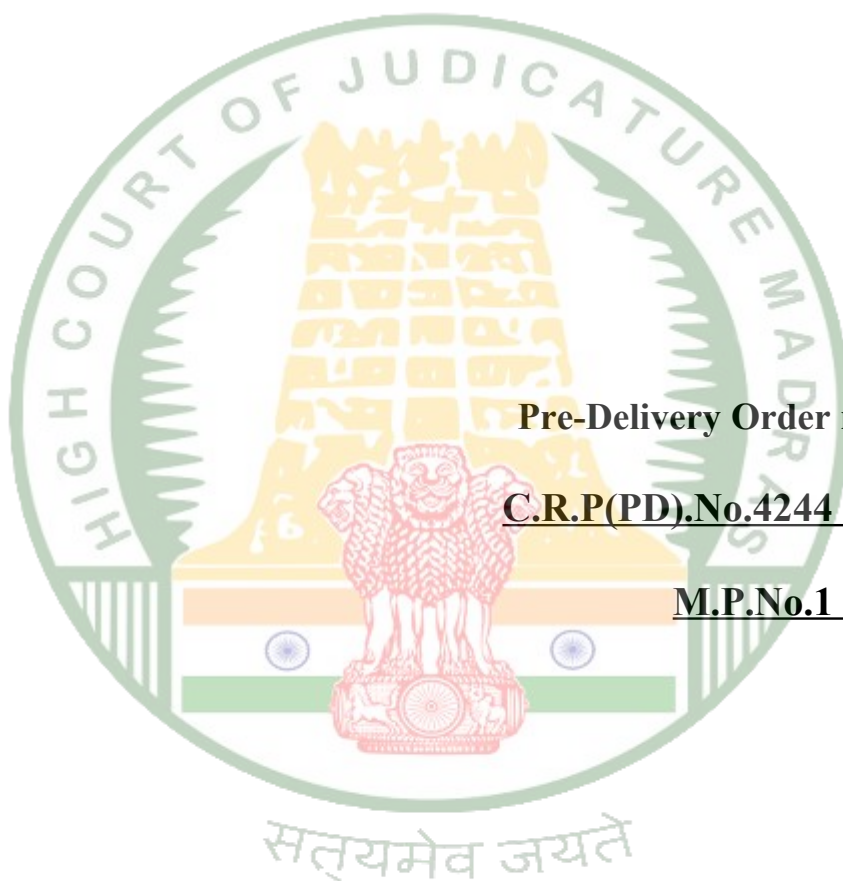
Krishnagiri District.

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CRP (PD).No.4244 of 2015
and MP.No.1 of 2015

P.RAJAMANICKAM.J.,

gv



Pre-Delivery Order made in

C.R.P(PD).No.4244 of 2015
and
M.P.No.1 of 2015

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