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C.R.P.(PD).Nos.73 and 75 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).Nos.73 and 75 of 2020

and

C.M.P.No.471 of 2020

S.Murugan

.. Petitioner in both the CRPs

Vs.

Vijaya

.. Respondent in both the CRPs

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal orders dated 27.11.2019 made in I.A.Nos.579 and 580 of 2019 in O.S.No.435 of 2012 on the file of the II Additional Subordinate Judge, Salem, by allowing these Civil Revision Petitions.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondent : Mr.C.D.Sugumar

ORDER

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Challenge in these two Revisions is to the orders of the learned II Additional Subordinate Judge, Salem, allowing the applications in I.A.Nos.579 and 580 of 2019.

2. The suit in O.S.No.435 of 2012 was filed by the respondent herein seeking partition and allotment of her $\frac{1}{2}$ share in the suit property. The suit is being resisted by the defendant contending that the properties belonged to one Sampath and Alamelu and the defendant is the only heir of the said Sampath and his second wife Veerayi. It is also claimed that the mother of the plaintiff Sellammal is not the wife of Sampath.

3. After trial, when the suit was posted for arguments, the plaintiff came up with I.A.Nos.579 and 580 of 2019, seeking to re-open her evidence and mark certain documents. This application was resisted on the ground that there is no plea supporting these documents in the plaint and that the application itself is delayed. It was the further contention of the defendant that the application is an attempt to drag on the suit.



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4. The learned II Additional Subordinate Judge, Salem on a consideration of the facts and circumstances of the case, allowed the application, concluding that mere production of documents would not amount to proof of the case of the plaintiff. He took care to observe the right of the defendant to raise all objections when the documents are produced. Aggrieved by the said order, the defendant has come up with this Revision.

5. Mr.R.Marudhachalamurthy, learned counsel appearing for the petitioner would contend that the trial Court was not justified in receiving the documents, in the absence of support by way of pleadings. He would also contend that the application was filed after arguments. Therefore, he would be deprived of the right to cross-examine.

6. I am unable to concur with both the submissions of the counsel. The learned trial Judge has taken care to protect the right of the defendant, while he observed that mere marking of documents is not a proof of documents or proof of the plaintiff's case. As far as the second ground viz.,



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opportunity for cross-examination is concerned, PW1 is recalled and documents are marked through him. It is very much open to the petitioner to cross-examine PW1 on the recitals in the documents.

7. After all, the trial Court has exercised discretion in permitting the party litigant to lead evidence. I do not think, such a discretion could be interfered with, in a Revision under Article 227 of the Constitution of India. The Revisions therefore fail and they are accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

15.12.2021

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Internet : Yes

Index : No

Speaking order



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To

The II Additional Subordinate Judge, Salem.

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R.SUBRAMANIAN, J.

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