



WEB COPY



C.R.P.(PD).No.796 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.(PD).No.796 of 2019
and CMP.No.5222 of 2019

R.Veerasamy

... Petitioner

Versus

1.Roukmani
2.Cheliyan
3.Chitra
4.Annadurai
5.Vengadavan
6.A.Senthamaraikannan
Thayalnayaki (deceased)

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order passed in I.A.No.1233 of 2018 in O.S.No.159 of 2007 and direct the District Munsif, Jayankondam, and thereby to proceed with the adjudication by inviting 1st defendant to cross examine the 2nd defendant at the 1st instance and before permitting the plaintiff's to commence the cross examination of 2nd defendant.



C.R.P(PD).No.796 of 2019

For Petitioners : Mr.K.Krishnamoorthy

For Respondents : Mr.J.Hariharan
for S.Kaithamalai Kumaran
for R1 to R5
No Appearance for R6

ORDER

This Civil Revision Petition is directed to set aside the order passed in I.A.No.1233 of 2018 in O.S.No.159 of 2007 and direct the District Munsif, Jayankondam, and thereby to proceed with the adjudication by inviting 1st defendant to cross examine the 2nd defendant at the 1st instance and before permitting the plaintiff's to commence the cross examination of 2nd defendant.

2.Heard both sides.

3.The Revision petitioner herein is the second defendant in the suit in O.S.No.159 of 2007 filed by plaintiff for the relief of partition and other consequential reliefs as the second defendant/revision petitioner claimed right over the suit property based upon a sale deed dated 11.12.1953.



C.R.P(PD).No.796 of 2019

He also filed a written statement and the suit is ripe for trial. Now the plaintiff's evidence was over and the defendant evidence DW.1 was also over.

When the case was posted to cross examine DW.2, at that time, the second defendant filed an application in I.A.No.1233 of 2018, seeking direction of the Court to cross examine the said DW.2 by the 1st defendant at first instance thereafter by the plaintiff. The said application was contested by the plaintiff and on hearing both sides, the trial Court concluded that the claim made by the second defendant is unsustainable. Accordingly, the said revision was dismissed. Aggrieved by that the petition was filed.

4.The learned counsel for the petitioner submits that the plaintiff and the first respondent colluding with each other and contested the suit. Hence, to prove his defence, he must be the cross examined by the 1st defendant. The learned counsel appearing for the plaintiff/first respondent strongly objected the contention of the revision petitioner that there is no such collusion as he pleaded. Further, if the petition filed by the revision petitioner is allowed then he would have a chance to fill up the lacuna, which would lead to multiplicity of proceedings. But on considering the facts of the case, the second defendant from the inception took the defence as purchaser



C.R.P(PD).No.796 of 2019

of the property he is an enjoyment of second schedule property from the year 1953. But the plaintiff claimed right over the property based upon the partition held in the family in the year 1972 based upon a sale deed dated 08.07.1957. Besides they also claimed right over the property, based upon the alleged partition dated 23.06.1919. But on seeing the facts of the case, the main defence based upon the sale deed taken by the second defendant is that earlier document was said to be executed in the year 1953. The first plaintiff's brother's son is the first defendant is a member of his family, but the second defendant is a stranger to the said family.

6.In such case in order to prove his defence, the second defendant while examining himself as DW.2, should be cross examined by the first defendant for the reason that then only DW.2/second defendant would know the defence taken by the first defendant. Therefore, the reason stated by the second respondent in the application is justifiable one. But without considering the legal aspects, the trial judge has erroneously dismissed. Hence the order passed in I.A.No.1233 of 2018 is set aside.



C.R.P(PD).No.796 of 2019

7. Accordingly, this Civil Revision petition is disposed of as the

suit in the year of 2007 and also part heard, the trial Judge is directed to dispose of the matter within a period of three months from the date of receipt of a copy of this order. Consequently connected Miscellaneous Petition is Closed. No costs.

27.10.2021

Internet : Yes / No

Index : Yes / No

ub

To

The District Munsif, Jayankondam.



WEB COPY



C.R.P(PD).No.796 of 2019

T.V.THAMILSELVI, J.

ub

C.R.P.(PD).No.796 of 2019

27.10.2021