



C.R.P.No.729 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2021

CORAM:

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

C.R.P.(PD)No.729 of 2019

and

C.M.P.No.4735 of 2019

Ganesan

.. Petitioner

Versus

1.Athiappan

2.Ramasamy

3.Kanthamani

4.Aramaayi

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decretal order dated 06.02.2019 made in I.A.No.2 of 2019 in O.S.No.279 of 2013 on the file of the Principal Subordinate Court, Namakkal.

For Petitioner : Mr.T.L.Thirumalaisamy

For Respondent : No appearance

ORDER

The petitioner has filed a revision to challenge the order passed by the Principal Subordinate Court, Namakkal, in I.A.No.2 of 2019 in O.S.No.279 of 2013, dated 06.02.2019.



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WEB COPY 2. Heard Mr.T.L.Thirumalaisamy, learned counsel for the petitioner and there is no representation on behalf of the respondents.

3. The learned counsel for the petitioner submitted that he is a defendant in the suit for the relief of partition during the trial and he has preferred an I.A.No.2 of 2019 to receive the partition agreement (muchilli) dated 07.04.2013, which was objected by the respondents herein.

4. On hearing both sides the trial Court dismissed the said application and not permitted the petitioner / defendant to produce the documents on his side. Aggrieved by the said order, he has preferred this revision.

5. At the time of arguments, the learned counsel for the petitioner submitted that while the defendant filed the written statement, he mentioned about the partition / muchili dated 07.04.2013 and the said document was also admitted by the respondents / plaintiffs. During the trial, he has not produced the document on his side and for that purpose he filed the application and the same was rejected by the learned trial Judge by mis-construed of the fact.



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6. On a perusal of the order of the trial Court, it reveals that the defendant has not disclosed the possession of the document, so that only, the trial Court refused to accept the said documents. Though the possession of the document not specifically mentioned at the time of filing in the written statement itself, the defendant disclosed about the partition / Muchalli. Even as per the evidence of PW1, they have admitted about the said document. In order to give facts and to adjudicate the issues between the parties, all the material evidences are permitted to be adduced on the side of both parties.

7. In the partition suit, all the parties are having equal right to defend their claim. If the defendant is not permitted to produce the document to substantiate this relief, which would lead to multiplicity of proceedings miscarriage of justice. Therefore, the reasons stated by the learned trial Judge is liable to be set aside.

8. Accordingly, this Civil Revision Petition is allowed and the order passed by the learned trial Judge is set aside. The suit is of the year 2013,



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hence, the trial Court is directed to dispose the case 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.

22.10.2021

Index : Yes / No

Speaking Order: Yes/No

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To

- 1.The Principal Subordinate Judge,
Namakkal.
- 2.The Section Officer,
V.R.Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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