

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P. (PD) No.1068 of 2021
and
C.M.P.No.8453 of 2021

1.Indirani
2.Visaka

..Petitioners/Petitioners/Defendants 2 and 4

Vs

1.Jayalakshmi
2.Saraswathi

..Respondents 1 and 2/Respondents 1 and 2/Plaintiffs

3.Sivakolunthu

..3rd Respondent/3rd Respondent/1st Defendant

4.Pavithra

..4th Respondent/4th Respondent/3rd Defendant

5.Balasubramaniam

6.Chitra

7.Premkumar

8.Selvam

..Respondents 5 to 8/Respondents 5 to 8 /Defendants 5 to 8

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the impugned order dated 04.03.2021 passed in I.A.No.18 of 2021 in O.S.No.38 of 2016 on the file of the II Additional District Judge, Tiruppur.

For Petitioner

..

Mr.V.M.Venkatarama

For Respondent

..

No appearance

ORDER

The 2nd and 4th defendants in O.S.No.38 of 2016 now pending on the file of the II Additional District Court, Tiruppur, is the revision petitioner herein.

2.The suit in O.S.No.38 of 2016 which had been filed for partition and separate possession has progressed substantially with the plaintiffs letting in evidence and the 1st petitioner herein / 2nd defendant also adducing evidence. The matter is now posted for recording of further evidence on behalf of the other defendants in the suit. It is to be mentioned that there are totally eight defendants in the suit.

3.The grievance raised by Mr.V.M.Venkatramana, learned counsel for the petitioners is that very unfortunately, the present petitioners herein had not specifically raised an issue of limitation in their written statement. However, they have availed the opportunity during cross-examination to put necessary questions regarding the maintainability of the suit on the issue of limitation during the cross-examination of the witness for the plaintiffs.

4.I also find from the perusal of the order now impugned that the Court had also framed an issue regarding limitation. Since the issue limitation is a mixed question of fact and law, the present petitioners herein should not be put to fault subsequently on the sole ground that they have not raised that particular issue in their written statement.

5.An onus is cast on the learned II Additional District Judge, Tiruppur, to examine the point of limitation on the basis of relevant records and also taking into consideration the evidence adduced during the cross-examination of the witness for the plaintiffs and also during chief examination by the present petitioners herein particularly, the 1st petitioner / 2nd defendant on the issue of limitation and thereafter give a considered judgment also touching on the issue of limitation. Let the trial progress further with the other defendants adducing evidence and let the learned Judge give a finding on the issues framed by him. Interference at this stage may not be proper and I hold that the interest of all parties would be reasonably protected by the observations made aforesaid.

C.V.KARTHIKEYAN,J.
smv

6.The revision petition is disposed of with a request to the learned II Additional District Judge, Tiruppur, to examine the point of limitation while deciding the main case. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

14.06.2021

Internet:Yes/No
Index:Yes/No
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To
The II Additional District Court,
Tiruppur.



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