

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.2504 of 2018

and

CMP.No.15283 of 2018

- 1.Madhammal
- 2.Madhevan
- 3.Thundi @ Easwari
- 4.Thundumathi
- 5.Rajammal
- 6.Raththinamma
- 7.Sivasami
- 8.Thambidiponnan
- 9.Mathappa
- 10.Thundumadan
- 11.Periya Puttappa
- 12.Chinnaputtan

..Petitioners

Vs.

- 1.Madevan
- 2.Jadesami
- 3.Puthuraj
- 4.Alagappa
- 5.Thundumadappa
- 6.Thundumaathi
- 7.Jadayappa
- 8.Alagappa
- 9.Kempamaathi
- 10.Ganga

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair order and decretal order dated 26.03.2018 passed in IA.No.133 of 2018 in OS.No.126 of 2016 by Sub Judge, Sathyamangalam and allow this civil revision petition.

For Petitioners : Mr.A.Mohamed Ismail

For Respondents

For R1,4,5&10 : Mr.R.T.Doraisamy

R2,3,6 to 9 : No appearance

ORDER

This Civil Revision Petition is filed against the fair order and decretal order dated 26.03.2018 passed in IA.No.133 of 2018 in OS.No.126 of 2016 on the file of the Sub Judge, Sathyamangalam, thereby allowing the petition filed to remove the evidence of PW4 in the main suit.

2. The petitioners are the plaintiffs and the respondents are the defendants. The petitioners filed suit for partition. After examining the evidence of plaintiffs as well as the defendants, when the suit was posted for arguments, the petitioners filed petition to reopen and recall to examine 9th plaintiff as one of their witness and the same was not objected by the respondents and endorsed no objection. Thereafter, it was allowed and the 9th plaintiff was examined as PW4 and after

examining 9th plaintiff as PW4, the respondents filed petition to strike of the evidence of PW4 for the reason that PW1 has filed petition to reopen for marking of two documents on the side of the plaintiffs. However, the plaintiffs did not examine PW1 and they examined 9th plaintiff as PW4 without obtaining permission. As contemplated in Civil Procedure Code, the 9th plaintiff could not be examined as PW4. The court below allowed the petition for the reason that the 9th plaintiff did not obtain any permission under Order 18 Rule 3A of CPC.

3. On perusal of the affidavit filed in support of the petition to reopen and recall revealed that all the plaintiffs were the petitioners, in which the 9th plaintiff sworn the affidavit on behalf of the other plaintiffs. In the petition, they categorically stated that only to examine 9th plaintiff as one of their witness and to mark two documents through him and the same was allowed. No objection endorsement was made by the respondents. Thereafter, the trial court also examined 9th plaintiff as PW4 and marked two documents. Therefore, the contention of the respondents are not correct and the order passed by the court below is perverse, illegal and liable to be set aside.

4. Accordingly, this civil revision petition is allowed and the order dated 26.03.2018 passed in IA.No.133 of 2018 in OS.No.126 of

2016 on the file of the Sub Judge, Sathyamangalam is set aside. The trial court is directed to dispose of the suit within a period of three months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No order as to costs.

21.06.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
lok



WEB COPY

To

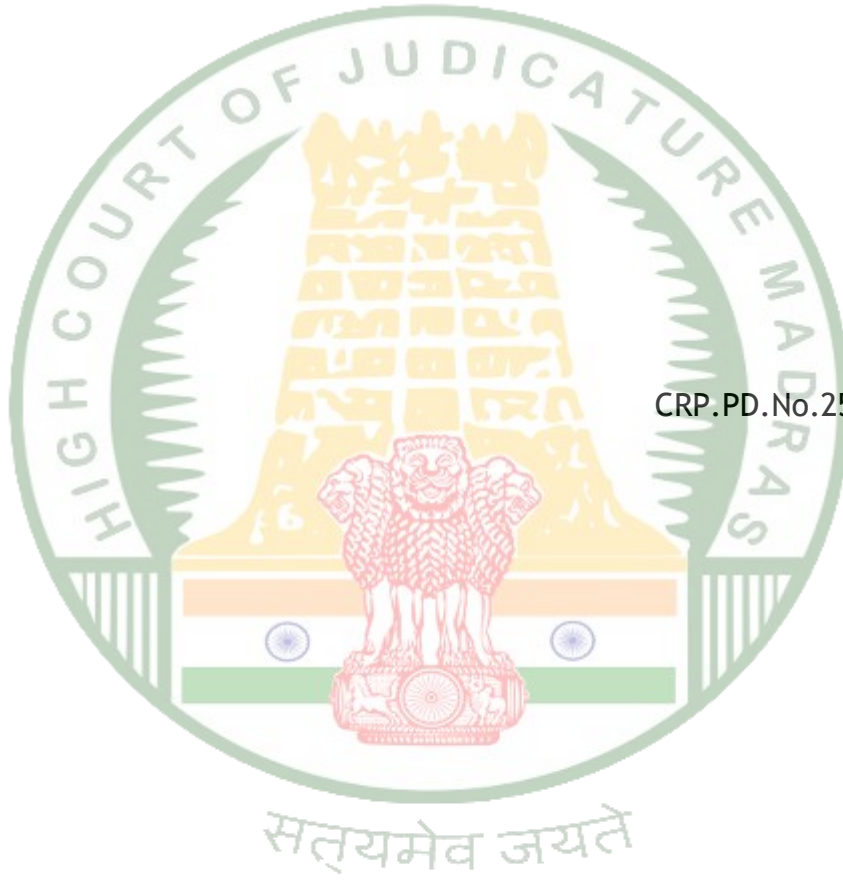
The Subordinate Judge,
Sathyamangalam



WEB COPY

G.K.ILANTHIRAIYAN,J.

lok



CRP.PD.No.2504 of 2018

WEB COPY

21.06.2021