

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2021

CORAM

THE HON'BLE Mr. JUSTICE P.D. AUDIKESAVALU

C.R.P. (PD) Nos. 1636 and 1637 of 2014

1. Kalaimani

2. Vanitha

... Petitioners in both C.R.P.s

-VS-

1. Tamizhselvi

2. Rajkumar

... Respondents in both C.R.P.s

Prayer in C.R.P. (PD) No. 1636 of 2014:- Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to set aside the fair and decreetal order of the Learned Subordinate Judge of Panruti allowing I.A. No. 263 of 2012 in O.S. No. 40 of 1998 by order dated 09.01.2013.

Prayer in C.R.P. (PD) No. 1637 of 2014:- Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to set aside the fair and decreetal order of the Learned Subordinate Judge of Panruti allowing I.A. No. 264 of 2012 in O.S. No. 40 of 1998 by order dated 09.01.2013.

For Petitioners : Mr. R.Gururaj (in both C.R.P.s)

For Respondents : No appearance (in both C.R.P.s)

COMMON ORDER
(through video conference)

The Civil Revision Petitions arise out the separate orders dated 09.01.2013 in I.A. Nos. 263 and 264 of 2012 in O.S. No. 40 of 1998 on the file of the Subordinate Court, Panruti (hereinafter referred to as the 'Trial Court' for short). The parties are hereinafter referred to as per their description in the suit in O.S. No. 40 of 1998 before the Trial Court for the sake of clarity and convenience.

2. Though notice has been served on the Learned Counsel who appeared for the Respondents in the Trial Court, the Respondents have not entered appearance in this Civil Revision Petition.

3. Heard Mr. R.Gururaj, Learned Counsel for the Plaintiffs and perused the materials placed on record, apart from the pleadings of the parties.

4. The suit in O.S. No. 40 of 1998 had been instituted by the Plaintiffs seeking the relief of partition and separate possession of the properties claimed to be held by them jointly with the Defendants. Though the suit had been decreed by a judgment and decree dated 28.04.2004 passed by the Trial Court,

it was set aside in appeal by judgment and decree dated 15.12.2008 in A.S. No. 5 of 2005 passed by the Principal District Court, Cuddalore and the matter was remanded. Thereafter, after the closure of the evidence of the Plaintiffs, the Second and Fourth Defendants had filed applications in I.A. Nos. 263 and 264 of 2012 to re-open and re-call the evidence of the Plaintiffs respectively. Though it was opposed by the Plaintiffs expressing difficulty for the appearance of the Second Plaintiff who is in Germany, the Trial Court allowed the application merely because the Plaintiffs were not represented on that hearing. Aggrieved thereby, the present Civil Revision Petitions have been filed.

5. The Trial Court has sent a report dated 03.03.2021 to this Court pointing out that after the filing of the Civil Revision Petitions, the suit had been dismissed for non-prosecution and it was subsequently restored on condition of payment of costs of Rs. 1,500/- by order dated 19.01.2018 in I.A. No. 10 of 2014 passed by the Trial Court, but on the failure of the Plaintiffs to pay the imposed costs, the said application had been dismissed. However, the Principal District Court, Cuddalore by order dated 30.06.2020 in C.M.A. No. 13 of 2018 set aside the order and remitted the matter back to the Trial Court and the suit has been restored to file on 02.03.2021. When the case is called today, the witness, viz., Ms. Vanitha, who is the Second Plaintiff, has appeared through

video conference before this Court and expressed her willingness to appear before the Trial Court in June 2021 and informed that due to the COVID pandemic, she is not able to travel to India in the meanwhile.

6. Having regard to the aforesaid submissions made on behalf of the Plaintiffs, while confirming the impugned order of the Trial Court, it is made clear that the suit shall be listed for recording of evidence of the Second Plaintiff on 09.06.2021 and the Second Plaintiff shall be present to attend the hearing on that date and the subsequent dates to which it is adjourned till the completion of her evidence. However, if there is any difficulty for the Second Plaintiff to travel to India due to COVID pandemic at that time, it would be open to the parties to resort to mechanism provided in the Madras High Court Video-Conferencing in Courts Rules, 2020, or such other procedure as may be provided by law for recording of evidence. It shall be ensured by the Trial Court that there is atleast one effective hearing every week showing progress of the case. The Trial Court shall expeditiously dispose of the case on merits in accordance with law and file a report of compliance in that regard before the Registrar (Judicial) of this Court.

7. Accordingly, the Civil Revision Petitions are disposed with the aforesaid observations. No costs.

26.03.2021

vjt

Index: Yes/No

Note: Issue order copy by 08.04.2021.

To

The Subordinate Court,
Panruti.



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P.D. AUDIKESAVALU, J.

vjt



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