



C.R.P.(PD).Nos.2723, 2728 and 2730 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).Nos.2723, 2728 and 2730 of 2021

and

C.M.P.No.19956 of 2021

1.Vijaya

2.Jaya @ Arivazagi

.. Petitioners in all the CRPs

Vs.

Venkatesan

.. Respondent in all the CRPs

PRAYER in all the CRPs: Civil Revision Petitions filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 27.09.2021 passed in I.A.Nos.493, 494 and 495 of 2021 in O.S.No.153 of 2012 respectively on the file of Principal Sub-Court at Kallakurichi and consequently to allow the above applications.

For Petitioners : Mr.D.Senthilkumar



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COMMON ORDER

WEB COPY These Revisions are against the orders of the learned Subordinate Judge, Kallakurichi, dismissing the applications in I.A.Nos.493 to 495 of 2021, filed by the petitioners who are the plaintiffs in O.S.No.153 of 2012.

2. The said suit was laid by the plaintiffs seeking partition and separate possession of their shares and for injunction restraining the defendant from interfering with their possession except under due process of law.

3. The suit was resisted by the defendant contending that the original owner Pattammal had even during her life time executed a Will on 20.06.1999 and therefore the plaintiffs have no right over the properties. The suit went for trial, the plaintiffs examined three witnesses, thereafter the defendant examined 4 witnesses. The trial spanned over a period of 2 ½ years. After trial, when the suit was posted for arguments, the plaintiffs came up with these three applications, seeking to re-open, re-call and to examine one Begum, who is one of the attesting witnesses to the Will.



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4. It is not as if the Will was not projected earlier. The defendant laid his claim under the Will even in the written statement. The plaintiffs evidence was completed. The defendant had also let in evidence. When the suit is posted for arguments, the present applications have been filed.

5. These applications can be rejected on the sole ground of delay. Even on merits, it is for the propounder of the Will to prove the Will. The defendant who had propounded the Will, had examined the attesting witness to the Will. The plaintiffs now want to let in evidence by examining one of the attesting witnesses Begum to speak about the possession and enjoyment of the property.

6. This in my opinion cannot be done. The plaintiffs claiming partition and injunction should have taken all steps to prove their possession even when they let in evidence. They cannot wait for the defendant to complete his evidence and thereafter seek re-opening to examine some third party, thereby causing prejudice to the defendant.



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R.SUBRAMANIAN, J.

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7. If these applications are allowed it will not only prejudice the defendant, it will take him by surprise. Hence, I do not find any reason to interfere with the order of the Principal Subordinate Judge, Kallakurichi. The Revision therefore fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

08.12.2021

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Internet :Yes

Index : No

Speaking order

To

The Principal Subordinate Judge, Kallakurichi.

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