

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2021

CORAM

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

CRP.PD.No.3329 of 2017
and CMP.No.15507 of 2017

1.Karunanidhi
2.Selvi Malini

..Petitioners

Vs.

Easwara Gounder
..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 115 of CPC against the fair and decreetal order passed in IA.No.794 of 2017 in OS.No.851 of 2017 on the file of the District Munsif at Sulur, Coimbatore dated 17.08.2017.

For Petitioners : Mr.C.Deivasigamani

For Respondent : Mr.K.Govi Ganesan

ORDER

This civil revision petition is directed as against the fair and decreetal order passed in IA.No.794 of 2017 in OS.No.851 of 2017 on the file of the District Munsif at Sulur, Coimbatore dated 17.08.2017

thereby dismissing the petition to send for the entire records of the earlier suit relating to OS.No.26 of 1995 on the file of the District Munsif Court, Palladam.

2. The petitioners are the defendants 2 and 3 in the suit filed by the respondent for partition. The respondent averred that they purchased undivided share of one, Ramasamy Gounder from his legal heirs i.e. Kuppathal and Kaliammal as per the sale deed dated 09.12.1985. The petitioners contested the suit that they have a right of preemption and it was decreed in OS.No.26 of 1995 on the file of the District Munsif Court, Palladam. Now the present petition has been filed to send for the entire records in OS.No.26 of 1995.

3. The only issue raised by the petitioners is that whether the plaintiff can entitle for partition as per the sale deed dated 09.12.1985. The preemption right was dismissed in pursuance of the judgment and decree passed by this Court in SA.No.288 of 2002 dated 27.08.2010. Further, the petition has been filed under Order 13 Rule 10 (2) of CPC. It is relevant to extract the provision under Order 13 Rule 10 (2) of CPC as follows:

*(2) Every application made under this rule shall
(unless the Court otherwise directs) be supported by an*

affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

4. On reading of the aforesaid provision, the petitioners have to establish two conditions. (i) How the record is material to the suit and (ii) the authenticated copies of the documents could not be obtained or original is necessary. This Court already passed judgment and decree in SA.No.288 of 2002 dated 27.08.2010 and it is also reported in Law Journal. There is absolutely no difficulty for the petitioners to obtain the said certified copy of the judgment and also decree in the said suit. That apart, the present suit has been filed in the year 1997, in which PW1 was examined in chief on 23.07.2004 and PW2 was examined in chief on 01.07.2005. The petitioners failed to cross examine the witnesses and as such their witness were closed on 07.01.2012.

5. Thereafter, the petitioners also filed petition in IA.No.370 of 2015 to reopen the plaintiff's witness and the same was dismissed for non appearance. When the matter was posted for arguments on the side of the defendants, the petitioners come forward with the

petition to reopen the case in IA.Nos.2102 & 2103 of 2015 and both petitions were dismissed on 12.02.2016. Again, they filed petition in IA.No.466 of 2016 for restore the same and the same was allowed on cost. Thereafter, PW1 and 2 were cross examined by the petitioners herein. Thereafter the suit itself was transferred to the file of the District Munsif Court, Sulur. Again, the matter was posted for defendants witness and there was no representation for the petitioners herein. Again, they filed IA.No.738 of 2017 to reopen the case and the same was allowed on condition. Thereafter DW1 was examined. When the suit was posted for arguments, the present petition has been filed with oblique intention to drag the proceedings. Therefore, the present petition is vexatious and only for the purpose of misleading the court proceedings.

6. As stated supra, the petitioners did not make out the case that how record is material to the present suit, the judgment and decree of the earlier suit is necessary for establishing the plea whether the defendant has right of preemption. Further, the present suit is twenty years old and it is pending only because of the petitioners' petitions after petitions. Therefore, the court below, rightly dismissed the same and there is no illegality or infirmity in the order passed by the court below.

7. Accordingly, this civil revision petition is dismissed. However, the trial court is directed to complete the trial 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.

12.03.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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G.K.ILANTHIRAIYAN,J.

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To

The District Munsif at Sulur,
Coimbatore



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