

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2021

CORAM

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

C.R.P.(PD) No.817 of 2017
and C.M.P.No.3993 of 2017

1. S.Rathinasamy
2. S.Aruchamy
3. Ravi
4. R.Sakthivel

... Petitioners

Vs.

1. Kandasamy
2. Thangavel
3. Velusamy
4. Mayilsamy
5. Poongothai
6. Kupusamy @ Rajendran
7. S.Manokaran

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 08.09.2016 made in I.A.No.12 of 2016 in O.S.No.147 of 2014 on the file of the Fifth Additional District Court, Coimbatore.

For Petitioners : Mr.V.Anandhamurthy

For Respondents

For R1 & R2 : Mr.V.Vijayakumar

R3 to R7 : Notice Served

ORDER

This Civil Revision Petition has been filed as against the fair and decreetal orders dated 08.09.2016 passed by the learned Fifth Additional District Judge, Coimbatore, in I.A.No.12 of 2016 in O.S.No.147 of 2014, thereby allowing the petition to grant leave to file reply statement for the written statement filed by the petitioners herein.

2. The petitioners are the defendants 4, 5, 8 & 9 and respondents 1 & 2 are the plaintiffs. The respondents 1 & 2 filed the suit in O.S.No.147 of 2014 for partition in the year 2014. Thereafter on 18.09.2014 the petitioners filed their written statement. On 02.12.2015, the respondents 1 & 2 filed the petition in I.A.No.12 of 2016 to grant leave to file their reply statement. The trial Court allowed the said petition as against which the petitioners filed this Civil Revision Petition.

3. On perusal of the affidavit filed in support of the petition, it revealed that the petitioners herein had taken a new plea that the recital in the settlement deed dated 15.06.1963 reveals that the intention is to execute Will and the 8th defendant had claimed that the first defendant sold the property vide the sale deed dated 11.12.1980 for valid sale consideration and the predecessors-in-title were in continuous possession for about 35 years and the respondents 1 & 2 were never in possession. Therefore it is essential for the respondents 1 & 2 to file reply statement to deny the above facts.

4. The learned counsel appearing for the petitioners would submit the respondents 1 & 2 are taking new plea in their reply statement. Therefore, they are estopped from taking new plea that their mother was an absolute owner of the suit properties, since she inherited the same from her father and the alienations of the same cannot be questioned by the respondents 1 & 2 herein and they cannot take shelter under Section 11 of Hindu Minority and Guardianship Act. Further by way of reply statement

they are taking inconsistency plea. It is contrary to law and it cannot be allowed. Therefore, he prayed to allowed this revision petition.

5. The Court below allowed the petition for the reason that the respondents 1 & 2 can file their reply statement to the contentions raised by the petitioners in the written statement and even if such a reply statement is not filed, it would not be deemed that they admitted such contentions. Therefore even the non filing of the reply statement would no way prejudice the respondents 1 & 2 from denying the contention raised in the written statement. Further stated that on the basis of the contention raised by the petitioners herein, the issues had also been framed, whether the suit is bad for non-seeking the relief of cancellation of sale deed and whether the suit is barred by limitation. Therefore, the Court below rightly allowed the petition and this Court finds no illegality or infirmity in the order passed by the Court below.

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6. Accordingly, this Civil Revision Petition stands dismissed. However the petitioners are at liberty to file additional written statement, if so advised. The trial Court is directed to complete the trial within a period of nine months from the date of receipt of copy of this Order. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

10.03.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts

To

1. The V Additional District Judge,
Coimbatore

2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

G.K.ILANTHIRAIYAN, J.

rts



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