



C.R.P. (PD) No.1311 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2022

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

C.R.P. (PD) No.1311 of 2019

and

C.M.P.No.8595 of 2019

Muniyamma

.. Petitioner

Vs.

1.Chinna Bairappa
2.Kempamma
3.Lakshmi
4.Chowdamma
5.Dr.Srinivasa Gowdu
6.Chowdamma
7.Ramachandrappa
8.Beeramma
9.Narayanasamy
10.Saraswathi
11.Gopal
12.Rathnamma
13.Kempaiya

.. Respondents

Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decretal orders passed by the Additional District Judge, Hosur, in I.A.No.206 of 2018 in O.S.No.61 of 2013 dated 25.09.2018.



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For Petitioner : Mr.J.Hariharan

For Respondents : Mr.R.Jayaprakash for R1 to R12

: No appearance for R13

ORDER

This Civil Revision Petition is directed against the order passed by the learned Additional District Judge, Hosur, in I.A.No.206 of 2018 in O.S.No.61 of 2013.

2. The revision petitioner along with the 13th respondent in the Civil Revision Petition filed a suit in O.S. No.61 of 2013 on the file of Additional District Court, Hosur, for partition of 2/4th share in the suit property and division by metes and bounds. The suit is also for other consequential reliefs. During pendency of the suit, it is stated that a proof affidavit obtained from the second plaintiff was filed. However, the second plaintiff, according to the revision petitioner, refused to subject himself for further cross examination to cause serious prejudice to the revision petitioner. Stating that the second plaintiff has colluded with other defendants and



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started acting adverse to the interest of the revision petitioner, the revision petitioner filed an application in I.A. No.206 of 2018 to transpose the second plaintiff as 13th defendant in the suit. The same was dismissed by the lower Court. Aggrieved by the order of dismissal, the above Civil Revision Petition is preferred by the first plaintiff.

3. Learned counsel appearing for the revision petitioner submitted that the second plaintiff has colluded with other defendants and that the revision petitioner can proceed with the suit on his own only if the second plaintiff is transposed as 13th defendant. The counsel further submitted that the revision petitioner cannot allow the second plaintiff as co-plaintiff after he exhibited an attitude openly against the interest of revision petitioner. It was suggested by the counsel that only by transposing the second plaintiff as 13th defendant, the suit can be proceeded further in order to protect the rights of revision petitioner. The trial Court noticed that the revision petitioner earlier filed an Interlocutory Application in I.A. No.42 of 2018 to scrap and eschew evidence of P.W.1. In the memo filed by the plaintiff, the revision petitioner sought permission to examine the second plaintiff as witness in the suit. Since the application was allowed by



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permitting to examine the second plaintiff and the second plaintiff is none other than the brother of the revision petitioner, the trial Court was unable to believe the statement of the revision petitioner that the second plaintiff has colluded with the other defendants. The trial Court observed that the reason stated by the revision petitioner in the petition for transposing the second plaintiff as 13th defendant is not relevant and unsustainable in law.

4. This Court is unable to appreciate the reasons of the lower Court while dismissing the application filed by revision petitioner to transpose the second plaintiff as 13th defendant. The suit is for partition. It appears that it is the common case of the plaintiffs 1 and 2 that they are entitled to 2/4th share in the suit property when they filed the plaint. It is admitted that the second plaintiff was examined as P.W.1. It is the case of the revision petitioner that the second plaintiff, after filing proof affidavit, has failed to come forward to cooperate with the trial of the suit by subjecting himself for cross examination. It was in those circumstances, the revision petitioner has filed a petition to eschew the evidence of P.W.1. As rightly opted by the revision petitioner, the application filed by the revision petitioner earlier to eschew the evidence of second plaintiff was allowed. It is to be noted



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that the revision petitioner wants to prosecute the suit filed for partition of his share. Though the suit was filed along with the second plaintiff, it was noticed that the second plaintiff after filing proof affidavit, did not come forward to subject himself for cross examination. If the first plaintiff is unable to secure the witness, he has reasons to believe that the second plaintiff may act against the interest of plaintiff throughout the proceedings.

5. When the apprehension of the first plaintiff appears to be genuine, the only remedy available to the first plaintiff is to transpose the non-cooperating second plaintiff as a defendant. In this case the evidence of P.W.1 is already eschewed at the instance of revision petitioner. It is not brought to the notice of this Court by any factual circumstances, to indicate collusion between the revision petitioner and the second plaintiff who has now been sought to be transposed. The reasons stated by the lower Court to reject the petition cannot be sustained in view of the very object of transposition and the peculiar situation to which the first plaintiff is put to. Hence, this Court is inclined to set aside the order of the lower Court.

6. Learned counsel for the petitioner and the respondent seeks



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indulgence of this Court to issue direction to the lower Court for early disposal of the case. Since the request appears to be reasonable, the learned Additional District Judge, Hosur, is directed to dispose of the suit in O.S. No.61 of 2013, as expeditiously as possible preferably within a period of four months from the date of receipt of a copy of this order.

7. As a result, this Civil Revision Petition is allowed. The order passed by the learned Additional District Judge, Hosur, in I.A.No.206 of 2018 in O.S.No.61 of 2013, is hereby set aside and the application in I.A.No.206 of 2018 in O.S.No.61 of 2013 on the file of the learned Additional District Judge, Hosur, stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Internet : Yes

Speaking order / Non-speaking order

Index: Yes / No

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To

The Additional District Judge,
Hosur.



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S.S.SUNDAR, J.,

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