



CRP.(PD).No.606/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2022

CORAM:

THE HON'BLE Mr. JUSTICE N.SESHASAYEE

CRP.(PD)No.606 of 2022 &
C.M.P.No.3139 of 2022

1.Shanmugasundaram
2.Ammakkamm

...Petitioners/Plaintiffs/Respondents

Vs

1.Shanthi
2.Kiruthika

...Defendants/Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair order and decreetal order dated 17.11.2021 in I.A.No. 193 of 2021 in O.S.No. 47 of 2017 pending on the file of Sub-Court Avinasi.

For Petitioners : Mr.M.V.Venkataseshan

ORDER

This Revision is preferred by the plaintiffs against an Order passed by the Sub Court, Avinasi, in I.A.No.193 of 2021 in O.S.No.47 of 2017, by which, the learned Judge has permitted the defendants to examine the attestor of a Will with which they resist a suit which the plaintiffs/revision petitioners had filed inter alia for a declaration that the said Will is void.



2. The learned counsel for the revision petitioners submitted that the plaintiffs have laid the suit for declaring inter alia that a Will dated 24.05.2006 said to have been executed by a certain S.P.Gopal, on the strength of which the defendants resist their claim of partition, is invalid and does not bind the plaintiffs. The trial of the suit has concluded, wherein after the defendants had taken out the present application to examine an attesor of the said Will. This was allowed by the trial court. The learned counsel submitted that the defendants ought to have known that they are under a burden to prove the Will by examining at least one of its attesor, but they did not do it. Their strategy to examine him after the closure of final arguments in the case. They had come up with the present application when the Court posted the matter for obtaining a clarification and it is apparent that it is intended to fill up the *lacuna* in their evidence and hence amounts to abuse of judicial process. They had their opportunity during the trial, but they deliberately chose to ignore it and now they attempt to bring a surprise upon the plaintiffs, argued the counsel.

3. This Court does not dismiss the contention of the learned counsel as without merit but it is not adequate to upset the reasoning of the learned



Judge. It has to be stated that the procedural law provides ample discretionary space to every Court, and unless the discretion is prove to have been used illegally or irrationally or inappropriately, the same is not liable to be interfered with under Article 227 of the Constitution. It must be underscored that every litigant must have ample opportunity to produce the best evidence in his/her possession, and the fact that it was delayed might not be a reason for foreclosing the opportunity. Procedural space must be conveniently used for the advancement of substantial justice and it may not be used as a tool of discipline unless an attitude to defeat the course of justice is established. And, here, the trial court must have ample free space, for it is the first court of facts.

5. There may have been some inconvenience to the plaintiffs, still it by itself does not taint the order of the trial court with illegality or impropriety or irregularity. After all, the plaintiffs can cross examine the attesting witness(s) and if he requires may also adduce any rebuttal evidence to the evidence of witnesses to be examined, and this procedural facility is available to them.

6.



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6. In fine, this court does not find merit in the revision and accordingly it is dismissed, subject to what is herein stated in the last preceding paragraph.

Consequently connected miscellaneous petition is closed. No Costs.

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Index : Yes/No

Speaking Order/Non Speaking Order

msv/dk

To

The Sub Court, Avinasi.



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N.SESHASAYEE, J.,

msv/dk

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