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CRP No.1223, & 1224 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.11.2022

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

CRP.Nos.1223 & 1224 of 2019
and CMP No.7860 of 2019

1. Saraswathi
2. K.A.Palanisamy
3. Pushpa @ Pushpalatha ... Petitioners
Vs.

1. Palanistry
Kumarasami Gounder
2. Venkatachalam
3. Maheswari
4. Selvaraj
5. Ponnammal ... Respondents

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 27.02.2019 passed in I.A.No.139 & 140 of 2019 in O.S.No.38 of 2019 by the Subordinate Judge, Palladam.

In both CRPs

For Petitioners : Mr.K.Goviganesan

For Respondents : No appearance



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COMMON ORDER

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Challenging the order passed in I.A.No.139 & 140 of 2019 in O.S.No.38 of 2019 dated 27.02.2019 by the Subordinate Judge, Palladam, the civil revision petitions have been filed.

2. The facts and circumstances of the case and issue arising out of the order is one and the same and hence, this Court passes the common order.

3. The suit in O.S.No.38 of 2019 was filed by the first respondent herein for partition and other consequential relief and the petitioners herein are the defendants 4, 5, & 8 in the above said suit. In that suit, after framing issues, evidence on the side of plaintiff and defendant was closed and the matter was posted for arguments. At that time, the plaintiff filed a petition in I.A.No.139, 140/2019, to re-open the evidence of plaintiff side and to recall PW1 to adduce oral and documentary evidence. The above petitions were allowed by the Trial Court and the same are impugned herein.



4. The learned counsel for the petitioner submitted that, already the plaintiff filed I.A.No.116/2018 to recall PW1 and it was allowed, afterwards, Ex.A15 to Ex.A20 were marked and PW2 was also cross examined in full. He further submitted that, when the case was posted for arguments, the plaintiff again filed I.A.No.95/2019, to recall PW1 to adduce rebuttal evidence and that petition was also allowed. But, the petitioner has not examined any witnesses, on the other hand he filed a memo, stating that he is not going to adduce any rebuttal evidence. Subsequently, when the case was posted for arguments, the plaintiff filed yet another petition in I.A.No.139,140/2019 to reopen and recall PW1, without giving any reason.

4.1. The learned counsel for the petitioner further submitted that already, on two occasion, the petitions filed by the plaintiff were allowed and the DW1 was elaborately cross examined. In spite of that, the plaintiff again filed the Reopen and Recall petitions, without assigning any reason, in order to fill up the lacuna. However, the Trial Court without appreciating the above facts, erroneously allowed the petitions and hence, the same are liable to be set aside.



5. No representation for the plaintiff/first respondent.

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6. A perusal of the records reveals that, in the above suit, evidence on the side of plaintiff and the defendants was closed. Earlier, the plaintiff filed I.A.No.116/2018 and it was allowed and the plaintiff marked Ex.A15 to Ex.A20. Again he filed I.A.No.95/2019, which was also allowed to adduce rebuttal evidence. However, the plaintiff had not examined any witness, whereas, filed a memo stating that he is not going to adduce any rebuttal evidence. In such circumstances, while the case was posted for argument, the plaintiff filed another application in I.A.No.139 & 140/2019 to re-open the evidence of plaintiff side and to recall PW1. In the affidavit, it is stated by the plaintiff that, he came to know fresh and new facts from the oral and documentary evidence adduced by DW1 and the additional written statement filed by her. But, it is to be noted that, after cross examining the DW1 and when the case was posted for arguments, the plaintiff filed I.A.No.95/2019, to adduce rebuttal evidence, which was allowed by the Trial Court on 15.02.2019. However, the plaintiff has not utilised the above opportunity, but he filed a memo stating that he is not going to adduce any rebuttal evidence. Further, the plaintiff also filed reply statement



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and additional reply statement to the written statement and additional written statement filed by the respective defendants. In such circumstances, without stating any valid reasons and without narrating the new facts that are came to know him, the plaintiff filed the petitions to reopen the plaintiff side evidence and to recall PW1, which were also allowed by the Trial Court. Therefore, this Court is of the opinion that the impugned order passed by the Trial Court warrants interference by this Court and the same are liable to be set aside.

7. Accordingly, the Civil Revision Petition in CRP No.1223 & 1224 of 2019 are allowed and the impugned orders passed by the Trial Court in I.A.No.139 & 140/2019 dated 27.02.2019 are set aside. Consequently, connected miscellaneous petition is closed. Further, the Trial Court is directed to dispose the suit in O.S.No.38/2018, within three months from the date of receipt of a copy of this order.

21.11.2022

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To

1. The Subordinate Judge, Palladam.



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T.V.THAMILSELVI, J.
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