



CRP.No.3368 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.3368 of 2016 and
CMP.No.17166 of 2016

Vanathaiyan

... Petitioner

Vs.

1.Selvaraj
2.The Special Tahsildar,
Natham Survey,
Panruti
3.Iruthayaraj
4.Arokiyasami

... Respondents

PRAYER: Civil Revision petition is filed under Section 115 of CPC praying to set aside the fair and decreetal order dated 21.07.2016 passed in IA.No.28 of 2016 in AS.No.24 of 2012 on the file of the Subordinate Judge, Panruti and to allow the civil revision petition.

For Petitioner : Mr.R.Venkatajalapathy

For Respondents

For R1 : Mrs.R.Meenal

For R3 & 4 : No appearance

ORDER

This civil revision petition has been filed to set aside the fair and decreetal order dated 21.07.2016 passed in IA.No.28 of 2016 in AS.No.24 of



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2012 on the file of the Subordinate Judge, Panruti, thereby dismissed the application filed under Order 41 Rule 27 of CPC for seeking to receive documents.

2. Heard, Mr.R.Venkatajalapathy, the learned counsel for the petitioner and Mrs.R.Meenal, the learned counsel for the first respondent.

3. The petitioner is a plaintiff in OS.No.280 of 1999. It was filed for declaration and injunction in respect of the suit properties. However, it was dismissed and aggrieved by the same, the petitioner preferred appeal suit. While pending the appeal suit, the petitioner filed application in IA.No.28 of 2016 under Order 41 Rule 27 of CPC seeking permission to receive proof affidavit filed by the first respondent herein in the earlier suit in OS.No.207 of 2001 as evidence.

4. Admittedly, the first respondent is very much alive and his proof affidavit filed in the suit filed by one, Arokiya Mary Ammal in OS.No.207 of 2001 to be received as additional evidence in this appeal cannot be permitted. The deposition of living person cannot be received as evidence in the appeal



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and it can be only marked at the time of examination of parties in the evidence.

That apart, the appeal is of the year 2012 and after period of four years, the petitioner has come forward with the petition under Order 41 Rule 27 of CPC. In fact, the petitioner is also one of the defendants in the suit in OS.No.207 of 2001. He had knowledge about the suit and was in possession of evidence of the first respondent herein. Even then, the petitioner failed to state valid reason for not filing the evidence as document before the trial court. In fact, already the said suit documents were marked as Ex.A12 and Ex.B11. Therefore, the court below rightly dismissed the application and this Court finds no infirmity or illegality in the orders passed by the court below.

5. Accordingly, this civil revision petition is dismissed. However, the appellate court is directed to dispose of the appeal in AS.No.24 of 2012 within a period of twelve weeks from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Index : Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To
The Subordinate Judge,
Panruti

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