



CRP.(PD).Nos. 3682 & 3683 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.(PD).Nos. 3682 & 3683 of 2019

and

CMP.No.24215 of 2019

Shanthi @ Santha

.. Petitioner
[in both CRPs]

Versus

N. Palanisamy

...Respondent
[in both CRPs]

Common Prayer:

Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 05.02.2019 made in I.A.Nos.610 & 611 of 2018 in O.S.No.597 of 2014 on the file of V Additional District Judge, Coimbatore.

For Petitioner : Mr.T.M. Hariharan
(in both CRPs)

For Respondent : Mr.V. Anandhamurthy
(in both CRPs)



CRP.(PD).Nos. 3682 & 3683 of 2019

WEB COPY

COMMON ORDER

These Civil Revision Petitions have been filed to set aside the fair and decretal order dated 05.02.2019, passed in I.A.Nos. 610 & 611 of 2018 in O.S.No.597 of 2014 on the file of V Additional District Judge, Coimbatore, respectively.

2. The learned counsel for the revision petitioner/plaintiff submitted that the original suit filed by the petitioner/plaintiff for the relief of partition. Both side evidence closed and the matter was posted for arguments on 28.09.2018. The above applications have been filed to reopen the case and permit the petitioner/plaintiff to adduce further evidence. If this Court grants one more opportunity to the petitioner/plaintiff to cross examine the PW1, the petitioner/plaintiff can prove her case but the trial Court has refused to give an opportunity to the petitioner/plaintiff to cross examine the PW1. Hence, he prays to allow this revision.



CRP.(PD).Nos. 3682 & 3683 of 2019

WEB COPY

3. The learned counsel appearing for the respondent/defendant submitted that DW1 died in this case. However, several opportunities were given to the legal heirs of DW1 and the same were already on record. After impleading the legal heirs of DW1, several opportunities were given to the petitioner/plaintiff to cross examine DW1, and the defendant's side evidence was closed.

4. Originally, the suit was filed by the petitioner/plaintiff in O.S.No.597 of 2014 before the learned V Additional District Judge, Coimbatore, for the relief of partition. The respondent/defendant also contested the suit by filing written statement and issues have also been framed. The contention of the petitioner/plaintiff is that she had been examined as PW1 and the respondent has examined three witnesses as DW1 to DW3 and that the respondent though stated an unregistered Will dated 27.08.2013 alleged to have been executed by Pechiammal with regard to her share in the suit property in the written statement, he has not produced the said original Will before the Court and that the petitioner is disputing the alleged Will, as a fabricated document and not genuine and valid under law. But the contention of the respondent/defendant is that



CRP.(PD).Nos. 3682 & 3683 of 2019

WEB COPY

when the evidence of the petitioner/plaintiff was let in as PW1 no whisper has been made about this medical evidence and that the petitioner has also not filed any documents in this regard, that all along the petitioner has kept quite till the evidence of the respondent and the attestors to the Will was let, that now after the case was posted for arguments, this petition has been filed. The cross-examination of DW1's evidence was closed and thereafter, the plaintiff has filed the recall and reopen applications for further cross examination of PW1. But the trial Court dismissed both applications on the ground that no reason was assigned by the petitioner/plaintiff.

5. On a perusal of the order of Court below, it reveals that DW1 to DW3 have already been examined. Both applications are filed by the petitioner/plaintiff to reopen and recall the case and permit the petitioner to adduce further evidence. The original suit filed by the petitioner/plaintiff is for the relief of partition. In the reply notice, the respondent/defendant stated that the alleged Will dated 27.08.2013 was executed by one Pechiammal and the said Will is an unregistered Will. In this case, the plaintiff's side evidence was closed on 20.11.2017. To prove her claim, the



CRP.(PD).Nos. 3682 & 3683 of 2019

plaintiff was examined as PW1 and then on the side of the defendant, DW1 to DW3 had been examined. It is also seen that if no opportunity was given to the petitioner/plaintiff, the petitioner will be put to irreparable loss and hardship. Furthermore, the petitioner/plaintiff has not taken any steps to cross examine the PW1 and then only, the trial Court had closed the evidence on the side of the defendant and both side evidence have been closed.

6. Accordingly, both the Civil Revision Petitions are allowed. The order dated 05.02.2019 passed in I.A.Nos.610 & 611 of 2018 in O.S.No.597 of 2014 on the file of V Additional District Judge, Coimbatore, are set aside. Further, the trial Court is directed to dispose of the suit in O.S.No.597 of 2014 on the V Additional District Judge, Coimbatore, within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

08.11.2022

msm

Index : Yes/No

Speaking Order : Yes/No



WEB COPY



CRP.(PD).Nos. 3682 & 3683 of 2019

To

1. The V Additional District Judge,
Coimbatore.
2. The Section Officer, V.R.Section
High Court, Madras.



WEB COPY



CRP.(PD).Nos. 3682 & 3683 of 2019

T.V.THAMILSELVI, J.

msm

C.R.P.(PD).Nos. 3682 & 3683 of 2019

08.11.2022