



C.R.P.Nos.3792 and 3793 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2022

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.Nos.3792 and 3793 of 2017

1. Jayalakshmi
2. Yuvaraj
3. Meena
4. Bharathiyar

.. Petitioners in both C.R.Ps
Vs.

Arumainayagam (died)

1. Suresh Jain
2. Jayanthi @ Nalini
3. Rajathi
4. Arulkumari
5. Chitra
6. Amirtham
7. Raja @ Amirtharaj
8. Geetha
9. Rameela

.. Respondents in both C.R.Ps

Common Prayer: Civil Revision Petitions filed under Section 115 of CPC to set aside the order and decretal order passed by the learned Sub Judge, Gudiyatham, Vellore in I.A.No.52 of 2016 in A.S.No.46 of 2008 and I.A.No.85 of 2016 in A.S.No.46 of 2008 dated 14.07.2017.



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C.R.P.Nos.3792 and 3793 of 2017

In both C.R.Ps

For Petitioners : Ms.T.Sreelekha
For R1 : No appearance
For R2 to R7 : Mr.M.Marudhachalam
For R8 : Not ready in notice
For R9 : No appearance

COMMON ORDER

The Civil Revision Petition in C.R.P.No.3792 of 2017 has been filed as against the fair and final order passed in I.A.No.52 of 2016 in A.S.No.46 of 2008 dated 14.07.2017, on the file of the learned Sub Judge, Gudiyatham, Vellore, thereby dismissing the petition to condone the delay in filing the petition to receive the additional documents and to mark the same on the side of the petitioner.

2. The Civil Revision Petition in C.R.P.No.3793 of 2017 has been filed as against the fair and final order passed in I.A.No.85 of 2016 in A.S.No.46 of 2008 dated 14.07.2017, on the file of the learned Sub Judge, Gudiyatham, Vellore, thereby dismissing the petition seeking amendment in the plaint.

3. The petitioners are the plaintiffs and the respondents are



C.R.P.Nos.3792 and 3793 of 2017

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defendants in the suit filed for partition. Originally, the husband of the first petitioner filed a suit for partition. Pending suit, he died. Thereafter, the petitioners were brought on record as legal representatives of the deceased plaintiff. The said suit was dismissed on the ground that the suit schedule properties were bequeathed in favour of the respondents by way of a Will executed by their father on 01.04.1975. Aggrieved by the same, the petitioners preferred an appeal Suit in A.S.No.46 of 2008 on the file of the Subordinate Court, Gudiyattam. Pending the appeal, the petitioners filed two applications to amend the plaint and to receive additional documents with a delay. The suit for partition itself was dismissed only on the ground that the respondents claim the suit schedule properties through the Will dated 01.04.1975. Now, the petitioners filed this petition on the ground that the father of the defendants was converted into Christian and as such the Will executed by him should be probated in accordance with law.

4. Further, the suit properties are ancestral properties and as such the father of the defendants cannot execute any Will as if those properties were self acquired properties. The said applications were filed after a



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period of 27 years, since 1989. Admittedly, the petitioners had knowledge about the Will dated 01.04.1975. Even then, the petitioners did not take any steps to amend the plaint and did not file those documents in support of their contentions before the Trial Court.

5. The learned counsel for the respondents relied upon the Judgment reported in **2017 ICTC 185** in the case of **N.Jothi Vs. S.Radha and others**, wherein this Court held that the permissibility of the plaint at the appellate stage cannot be granted casually. Admittedly, the petitioners sought for amendment of the plaint in the appeal stage that too when the Appeal Suit was posted for arguments.

6. As stated supra, the petitioners had knowledge about the Will dated 01.04.1975 executed by the father of the respondents, through which, they are claiming title to the suit schedule properties. In fact, the suit itself was dismissed only on that ground. After a period of 27 years, the petitioners preferred these applications to receive the additional documents and to amend the plaint. It cannot be permitted and the Court below rightly dismissed the applications filed by the petitioners and this



C.R.P.Nos.3792 and 3793 of 2017

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Court finds no infirmity or illegality in the orders passed by the Court below and this revision is liable to be dismissed.

7. Accordingly, these Civil Revision Petitions are dismissed. No costs. The Appellate Court is directed to dispose of the Appeal, within a period of three months from the date of receipt of a copy of this order, if not already disposed of.

07.12.2022

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
mn

G.K.ILANTHIRAIYAN,J.

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C.R.P.Nos.3792 and 3793 of 2017

To

The Sub Judge, Gudiyatham, Vellore.

C.R.P.Nos.3792 and 3793 of 2017

07.12.2022