



C.R.P PD(MD)No.1878 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 16.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

C.R.P(MD)No.1878 of 2022 and
CMP(MD) No.8428 of 2022

- 1.Geetharamani
- 2.Devika
- 3.Jothilakshmi
- 4.Vanitha

... Petitioners

Vs

S.Yogeshwaran(Died)

- 1.S.Thiyagarajan
- 2.S.Jayalakshmi
- 3.Karthika
- 4.Ganapathy
- 5.Subramanian
- 6.Muthusaravanan
- 7.Vijayalakshmi
- 8.Minor.Karthikeyan
- 9.Minor.Sountharya

(Minor respondents 8 & 9 are represented through their guardian mother Vijaylakshmi/7th respondent)

- 10.Kunjaram
- 11.Keerthana



C.R.P PD(MD) No.1878 of 2022

12.Minor.Ramesh

(Minor 12th respondent is represented through his mother, guardian 10th respondent/Kunjaram)

13.Annalakshmi

14.Alagappan

15.Jeyakumar

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for records relating to the order dated 24.08.2022 in unnumbered I.A.SR.No.5337/2022 in O.S.No.29/2011, on the file of the Principal District and Sessions Court, Sivagangai and set aside the same.

For Petitioners	: Mr.K.C.Ramalingam
For Respondents	: Mr.G.Prabhu Rajadurai

ORDER

This Civil Revision Petition is filed as against the order of the learned Principal District and Sessions Judge, Sivagangai in unnumbered I.A.SR.No.5337 of 2022 in O.S.No.29 of 2011.

2.The petitioners who are the plaintiffs in O.S.No.29 of 2011 have filed the above suit for partition. Pending the suit, the petitioners have filed an interlocutory application in I.A.No.302 of



C.R.P PD(MD) No.1878 of 2022

WEB COPY

2015 to reopen the case and to examine two witnesses in the partition Deed, Ex.A1. The said application was allowed by the trial Court with the cost of Rs.1,000/- to be paid to the respondent on or before 15.10.2015. However, the petitioners have not examined the witnesses. The petitioners have changed their counsel and the new counsel has filed I.A.Nos. 347 & 377 of 2015 to implead 13th respondent/purchaser and 14th & 15th respondents/power agents as necessary parties and the same were allowed. Thereafter amendment petition was also filed on 25.04.2016 in I.A.No.215 of 2016 and the same was dismissed on 17.11.2016. The suit was posted on 25.11.2016 for arguments, without giving any opportunity to the petitioners to examine the attested witnesses in the alleged partition deed, Ex.A.1, as per the order passed in I.A.No.302 of 2015, dated 15.10.2015. The petitioners filed a memo on 03.08.2022 before the trial Court, to permit the petitioners to examine the witnesses as per the order passed in I.A.No.302 of 2015. The trial Court returned the memo with a direction to the petitioners to file an application in this regard. Accordingly, the petitioners filed the



C.R.P PD(MD)No.1878 of 2022

above interlocutory application on 17.08.2022 and the same was rejected on the objections raised by the learned counsel for the respondents 4,5,6, 10 to 14. Aggrieved over the same, the present Civil Revision Petition is filed.

3.The learned counsel appearing for the petitioners submits that the examination of witnesses, who have signed in the partition deed(Ex.A.1) is essential for deciding the issue in the suit and the learned Judge ought to have allowed the application filed by the petitioners. Considering the importance of the examination of attested witnesses, the Court has already allowed I.A.No.302 of 2014. But due to the change of counsel, the examination of the witnesses has not been done immediately. The learned counsel further submits that in the memo filed by the petitioners, the petitioners were directed to file a petition and accordingly he filed an application. However, the same has been dismissed on the endorsement made by the respondents. Therefore, the trial Court ought to have number the application and



C.R.P PD(MD) No.1878 of 2022

WEB COPY

shall provide an opportunity to the petitioners.

4.The learned counsel appearing for the respondents submits that the above suit has been filed in the year 2011 and the evidence of the plaintiff and the defendants have been completed in the year 2015 itself. Thereafter, the petitioners are dragging on the proceedings by filing repeated applications. The conduct of the petitioners has also deprecated heavily by this Court. He also relied on the orders passed by this Court in CRP(MD) Nos.810 & 811 of 2022 dated 11.04.2022 and CRP(MD) No.346 of 2022, dated 04.03.2022, wherein, a direction has been issued by this Court to dispose of the suit in O.S.No.29 of 2011, within a period of three months from the date of receipt of a copy of that order. Even thereafter, the petitioners have filed several petitions and attempted to drag on the proceedings.

5.This Court considered the rival submissions made and also perused the materials placed on record.



C.R.P PD(MD) No.1878 of 2022

WEB COPY

6.The suit in O.S.No.29 of 2011 was filed for the relief of partition. Both side evidence were closed in the year 2015. Thereafter, the petitioners filed an application in I.A.No.302 of 2015 to examine the witnesses, who signed the partition deed, which was marked as Ex.A.1. The said application was allowed on terms. On 15.10.2015 the petitioners also paid the cost of Rs.1000/- to the respondents' counsel. Thereafter, the petitioners have not taken any steps to produce the witnesses stating that they have changed their counsel. Even after change of counsel, the petitioners filed I.A.No.215 of 2016 to amend the plaint. The said application was dismissed by the trial Court on 17.11.2016 and as against the same, the petitioners filed Civil Revision Petition in CRP(MD) No.1326 of 2017 before this Court. This Court, by its order dated 04.03.2022, observing that both side evidence are completed and the case is posted for arguments, the petitioners are not entitled to introduce a new case by filing an amendment petition and accordingly dismissed the Civil Revision Petition. The petitioners have also filed two other applications in I.A.Nos. 2 & 3 of 2021, to reopen



C.R.P PD(MD)No.1878 of 2022

and to recall DW1 and the same was dismissed by the trial Court, as against which, the petitioners preferred Civil Revision Petitions in CRP(MD) Nos. 810 and 811 of 2022 before this Court. This Court with the following observations dismissed the above Civil Revision Petition by its order dated 11.04.2022.

“3.On perusal of the records, it is seen that DW 1 was cross examined on 24.08.2015 and also the defendants side evidence was closed on 22.09.2015. For the past six years, the revision petitioners have not taken any steps to recall the evidence of DW1. Further, they have also filed impleading petition and amendment petition. But, the plaintiffs have blamed their previous counsel stating that he has not conducted the trial properly at the time of cross examination of D.W.1. However, the plaintiffs side evidence was taken by the same counsel. So, the complaint against the counsel is not genuine. The D.W.1 was completely cross examined in the year 2015 and thereafter, the plaintiffs have filed a petition after petition for the past six years. So, there is no genuine reason to reopen and recall the evidence of



C.R.P PD(MD) No.1878 of 2022

DW.1. Hence, this Court is not inclined to interfere with the order passed by the Court below.”

7.It is to be noted that even before filing of the above Civil Revision Petition, the respondents approached this Court for early disposal of the suit in O.S.No.29 of 2011, in CRP(MD) No. 346 of 2022 and the same was allowed by this Court on 04.03.2022. The learned counsel for the petitioners submits that in view of the conduct of these petitioners in dragging on the proceedings, the trial Court could not complete the trial as directed by this Court in CRP(MD) No. 346 of 2022 and hence made an application for extension of time. This court shall also pleased to grant further time based on the request made by the trial court.

8.Considering the conduct of the petitioners and the earlier orders passed by this Court, this Court is of the view that the petitioners are unnecessarily dragging on the proceedings without any



C.R.P PD(MD) No.1878 of 2022

WEB COPY

valid reasons, even though both side evidence have been completed in the year 2015 itself.

9.In view of the above, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.
No costs.

16.09.2022

Index : Yes / No.
Internet : Yes / No.
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To
The Principal District and Sessions Court, Sivagangai



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C.R.P PD(MD)No.1878 of 2022

B.PUGALENDHI, J.

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C.R.P(MD)No.1878 of 2022 and
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16.09.2022