



C.R.P. No. 624 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2023

CORAM:

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

C.R.P. No. 624 of 2023

and

C.M.P. No. 4935 of 2023

Vadivel,
S/o. Katha Gounder

... Petitioner

Vs.

1. Rajammal
2. Palani
3. Vasanthi

.. Respondents

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, to set aside the order dated 10.01.2023 made in unnumbered I.A.No.....of 2023 in O.S.No.20 of 2018 on the file of Subordinate Court, Palacode and to allow the Civil Revision Petition.

For Petitioner : Mr. I.Abrar Md. Abdullah



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ORDER

The Revision Petitioner herein is the 1st defendant in the suit, he has filed an application before the trial court in a suit in O.S.No.20 of 2018 for reopening the witness with regard to examining the witness pertaining to Ex.A4, which is a house tax receipt for the reason that there is no such house in the suit property and to prove the same, he wanted to examine further witness. Hence, he has filed an application to reopen the witness. But, that application was not taken on file by the trial judge stating that already the examination of witness was closed and now the case is posted for arguments, at that stage, the said application cannot be entertained. Moreover, the 1st defendant not complied Order 16 Rule 1 of C.P.C., which requires list of witnesses, thereby, the said application was rejected by the trial judge. Challenging the said findings, the present Civil Revision Petition has been filed.

2. Since the relief is claimed against the trial judge, notices to the respondents are dispensed with.



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3. The learned counsel for Revision Petitioner would submit that the suit was filed seeking for partition and he is having valid defence to prove his case, but the chance was not given to him to examine the witness. Unless sufficient opportunity is given to the 1st defendant, he will be put into much hardship.

4. On perusal of records, it reveals that the suit was filed in the year of 2014 by the respondents/plaintiffs for partition, in which the defendants have contested the suit stating that there is no relationship with the plaintiffs as well as they are not legal heirs of deceased Munusamy and also contended that they are trying to project the suit property as house property by marking Ex.A4, which are house tax receipts and it does not relates to the suit property, in which they claimed partition, as such the defendants have totally denied the plaintiff's claim. Now, on the side of plaintiffs, they have produced the document of house tax receipt to show that there is a house in the suit property, but the defendant's contention is that there is no house in the property. So, to prove the same, they have to necessarily examine the witness. Hence, he has filed the application after closure of evidence of both the parties, valid opportunity should be given to the defendants concerned, if



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not, their valuable right to defend their case will be defeated. Considering the same, this Court is inclined to direct the trial judge to take the application on file and dispose the same on merits within a period of two months from the date of receipt of copy of this order. Accordingly, this Civil Revision Petition is disposed of. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

03.04.2023

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

Sub-Judge,
Palacode.

T.V.THAMILSELVI, J.

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