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C.R.P.(PD).No.2585 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.11.2023

CORAM:

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

**C.R.P.(PD).Nos.2585 & 2586 of 2023
and C.M.P.No.15965 of 2023**

1. Kaliasammal
2. Sundarambal
3. Maragatham

... Petitioners
in both CRPs

Vs.

1. Indirani
2. Udhyakumar
3. Shanmugam

... Respondents
in both CRPs

Common Prayers:- Civil Revision Petitions filed under Section 227 of the Constitution of India to set aside the fair and final order dated 15.09.2022 made in I.A.Nos.712 & 713 of 2022 in O.S.No.432 of 2011 on the file of the learned District Munsif of Avinashi.

For Petitioners : Mr.Dharani Subramanian
in both CRPs

For Respondents : No appearance
in both CRPs



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COMMON ORDER

These present civil revision petitions have been filed to set aside the fair and final order dated 15.09.2022 made in I.A.No.712 & 713 of 2022 in O.S.No.432 of 2011 on the file of the learned District Munsif, Avinashi.

2. The learned counsel appearing for the petitioners submitted that that the respondents 1 & 2 herein are the plaintiffs and they have filed a suit in O.S.No.432 of 2011 against the petitioners and 3rd respondent herein with a prayer seeking declaration that the decree passed by the learned Principal Subordinate Judge, Tirupur in O.S.No.146/2010 in favour of the petitioners and 3rd respondent herein as null and void and permanent injunction restraining the petitioners and the respondent from interfering with the 1st and 2nd respondents' peaceful possession and enjoyment of the property. He further submitted that the petitioners and 3rd respondent are Class I legal heirs and the respondents 1 & 2 are class II legal heirs of one Sivanmalai Nadar. Originally the suit properties and other properties belong to one Thirumalai Nadar. After the demise of the said Thirumalai Nadar, his only son Mr.Sivanmalai Nadar inherited the



suit schedule mentioned property as the only surviving legal heir. The said Sivanmalai Nadar died intestate on 01.12.1995 and the petitioners and 3rd respondent who are the daughters and son of the deceased Sivanmalai Nadar became the only surviving legal heirs. After the demise of the said Sivanmalai Nadar, the petitioners and 3rd respondent are in absolute possession and enjoyment of the property. When that being so, the respondents 1 & 2 who are the daughters of the 3rd respondent claimed right over the suit schedule mentioned property by way of a forged settlement deed allegedly executed by late Mr.Sivanmalai Nadar father of the petitioners herein and the grand father of the respondents 1 & 2. The respondents 1 & 2 by relying on the forged settlement deed are seeking the above mentioned prayer in the suit.

3. The learned counsel further submitted that the petitioners contested the above suit by engaging an advocate and since the counsel did not mention the vital points in the written statement and ignored to question the witness pertaining to the crux of the case, the petitioners have changed their previous counsel and that they were unable to give instructions to their new counsel due to then prevailing pandemic



situation and their health issues, hence the plaintiff side witnesses were not cross examined further. As the evidence of the plaintiff side was closed the petitioners and 3rd respondent filed an application under Section 151 of CPC and Order XVIII Rule 17 of CPC to recall the plaintiff side witnesses and the same was dismissed by the trial Court.

4. Despite service of notice, there is no representation for the respondents.

5. Due to change of counsel and lack of communication on account of pandemic situation, the petitioners were not able to cross examine the plaintiffs side witnesses before the trial Court. The trial Court dismissed the application on the ground that the petitioners caused delay in cross examination of the witnesses and took number of adjournments and that the petitioners/defendants were not ready to proceed with the trial. However, unless and until the petitioners are given an opportunity to reopen the case and recall the witness and contest the case on merits, the right of the petitioners/defendants will be defeated and the same has to be considered.



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6. In view of the above, the order dated 15.09.2022 made in I.A.Nos.712 & 713 of 2022 are set aside. Considering that the suit is of the year 2011, this Court directs the trial Court to dispose of the suit on merits as expeditiously as possible within a period of three months from the date of receipt of a copy of this order and the parties are directed to co-operate for the trial.

7. With the above direction and observation, these civil revision petitions are disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

Index : No

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Internet : Yes

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To

The District Munsif
Avinashi.



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T.V. THAMILSELVI, J.

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