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CRP No. 2271 of 2019
and CMP.No.14795 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.2271 of 2019

and

C.M.P. No. 14795 of 2019

Vellaiyammal (Deceased)

1.Sundarajan

2.Santha

3.Kamala

... Petitioners

Versus

1.Sundari

2.Sathiyaraj

3.Ramar

4.Venkatachalam

...Respondents

Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the order and decretal order dated 15.03.2019, passed in I.A.No.992 of 2018 in O.S.No.345 of 2012, on the file of II Additional Sub-Court, Salem.

For Petitioners : Mr.K.Selvaraj

For Respondents : Mr.R.Subramanian



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ORDER

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The petitioners have filed this revision petition to set aside the order and decretal order passed by the learned II Additional Sub-Judge, Salem, in I.A.No.992 of 2018 in O.S.No.345 of 2012, dated 15.03.2019.

2. Heard, Mr. R. Neelakandan, learned counsel for the petitioners and Mr. R. Subramanian, learned Counsel for the respondents and perused the materials available on record.

3. The revision petitioners herein are the plaintiffs in O.S.No.345 of 2012. They have filed the suit for the relief of declaration of the suit scheduled property and other consequential reliefs. Pending suit, the plaintiffs have filed I.A. No. 992 of 2018 before the learned II Additional Subordinate Judge, Salem, under Order XVI Rule 6 read with Section 151 of Code of Civil Procedure, seeking to issue "*sub poena*" to the 1st defendant to produce the copy of plaint in O.S. No. 842 of 2014, on the file of the Additional District Munisiff II, Salem and the sale deed dated 09.09.2005, executed by the 1st defendant. The said application was strongly objected by the defendants stating that already all those documents were produced and the



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same are available in the case bundle and therefore, there is no necessity to issue *Sub poena* as prayed by the plaintiffs. It was also contended that order to drag on the proceedings, after dismissal of re-call petition, they have filed this application at the arguments stage and it is vexatious one.

4. On considering both side submissions, the learned trial Judge held that all those documents were already produced on the side of the defendants and based on that, the plaintiffs can very well submit their arguments. Since the case is posted for arguments, the application was dismissed with liberty to advance arguments enlightening the facts with respect to those documents sought to be produced. Challenging the said order, the plaintiffs have preferred this Revision petition.

5. The learned counsel for the revision petitioners submitted that the trial Court ought to have given opportunity to the petitioners to substantiate the plaint averments by issuing *sub poena* by exercising the powers conferred under Order XVI Rule VI of CPC. The trial court also did not consider that those documents were already filed before this Court in the earlier Civil Revision Petition No.1451 of 2018 and therefore, there is no legal embargo to mark the documents by sending the *sub poena*. However, the trial court



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erroneously dismissed the application filed by the petitioners and it calls for interference by this Court.

6. The learned counsel for the respondents argues that at the fag end of the disposal of the suit, when the suit was posted for arguments, the plaintiffs have filed the instant application to issue sub poena to mark certain documents. The learned counsel further submitted that those documents are already available before the trial court and therefore, there is no necessity to grant the relief prayed for by the defendants. It is also submitted that the trial court, in the order impugned in this Civil Revision Petition, has also given liberty to the plaintiffs to advance arguments enlightening the facts with respect of those documents. Therefore, no prejudice is caused to the plaintiffs by reason of dismissal of the instant application. Accordingly, the learned counsel for the respondents/defendants prayed for dismissal of the present Civil Revision Petition.

7. The facts reveal that the revision petitioners/plaintiffs have filed the suit for declaration, with regard to the settlement deed which stands in the name of 2nd defendant, made by the 1st defendant and for other consequential reliefs. The defendants also contested the case and after the



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completion of the oral evidence, the case was posted for arguments. In fact, during the pendency of the suit, the plaintiffs have filed an Interlocutory application to recall the witnesses and the same was dismissed by the learned trial Judge. Aggrieved by the same, the plaintiffs have preferred CRP.No.1451 of 2018, before this Court and the same was dismissed for default on 21.02.2018. Thereafter, the plaintiffs have filed the present application praying to issue *sub poena* to the 1st defendant to produce the sale deed of the year 2005 and also the plaint in O.S.No.844 of 2014 by giving direction.

8. On considering the submission of the counsel for both sides, it is evident that already the said plaint in O.S.No.844 of 2014, copy of the sale deed, FMD were produced and the same were available in the case bundle. Now the suit is posted for arguments. Therefore taking note of the fact that the documents are available before the trial Court, the learned trial Judge rightly gave liberty to the plaintiffs to advance arguments based on those documents before the Court. When such liberty is given to the plaintiffs, this Court is of the view that no prejudice will be caused to the plaintiffs by reason of dismissal of the instant application. Therefore, this Court is of the view that interference of this Court is not warranted.



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9. It is also seen from the records that while disposing of the earlier CRP No. 4534 of 2015, this Court directed the trial Court to dispose the suit within a time frame. Subsequently the instant application was filed by the plaintiffs and the trial Court is not able to dispose the case as early as possible. This only shows that the plaintiff is attempting to drag on the proceedings, which should not be encouraged.

10. In the light of the above observation, this Civil Revision Petition is dismissed as devoid of merits and the findings given by the learned trial Judge is confirmed. The plaintiffs are directed to co-operate with the trial Court for disposal of the suit. The trial Court is directed to dispose of the case as early as possible. Consequently, connected miscellaneous petition is closed. No costs.

28.07.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation:Yes/No
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To
1.The II Additional Sub-Judge, Salem.
2.The Section Officer,
VR-Section, High Court of Madras.

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T.V.THAMILSELVI, J.

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