



C.R.P.No.1581 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2023

CORAM :

THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

Civil Revision Petition No.1581 of 2023

and

C.M.P.No.10333 of 2023

Sridharan

.. Petitioner

Versus

Lakshmikantham Ammal (Died)

1. Krishnasamy @ Mohan

2. Saraswathy

3. Saraswathy

4. Sadasivam

5. Murugan

.. Respondents

PRAYER : This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 10.01.2023 in I.A.No.457 of 2022 in O.S.No.495 of 1998 on the file of the learned II Additional District Munsif at Puducherry.

For Petitioner : Mr.S.Subramanian

For Respondents : Ms.M.Vidya (for R1)

ORDER

This Civil Revision Petition has been filed against the fair and decretal orders dated 10.01.2023 in I.A. No. 457 of 2022 in O.S. No. 495 of 1998 on the file of the learned II Additional District Munsif, Puducherry.



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2. The suit was filed by one Lakshmikanthammal as a sole plaintiff.

The suit was filed for the relief of declaration to declare that one Kannammal, descendants of the said sole plaintiff is the owner of the suit property and for a consequential injunction restraining the defendants from interfering with the physical possession of the suit property.

3. In the plaint, the sole plaintiff has narrated the manner in which the suit property devolved upon the descendant Kannammal, the leasing out of the usufructs of the coconut trees in the suit property in favour of one Chidambaram, husband of the first defendant and father of the defendants 2 to 4. According to the sole plaintiff Lakshmikanthammal, there are lease deeds which shows that the usufructs in the coconut trees alone were leased out to Chidambaram, however, by passage of time, the defendants asserted a right over the suit property and therefore, she has filed the suit.

4. Pending suit, the sole Plaintiff Lakshmikanthammal died on 04.06.2021 and therefore, her legal heir was impleaded as the second plaintiff in the suit and he prosecuted the suit.



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5. The plaint was not contested by the defendants 1 to 4. It was contested only by the fifth defendant by filing written statement. According to the fifth defendant, the suit is collusive in nature between the second plaintiff and the defendants 1 to 4. As far as the fifth defendant is concerned, he purchased the suit property from the defendants 1 to 4 by means of a registered sale deed dated 01.10.1997. After his purchase the second plaintiff and defendants 1 to 4 are attempting to create a cloud over the title to the suit property and prayed for dismissal of the suit.

6. The fifth defendant has also filed additional written statement denying certain averments made in the plaint.

7. When the suit was taken up for trial, originally, on behalf of the plaintiffs, PWs 1 and 2 were examined and on behalf of the fifth defendant, the Village Administrative Officer was examined as DW1 and the evidence of plaintiff and defendant were closed. Thereafter, at the instance of the fifth defendant, the defendant side evidence was re-opened to cross-examine PWs 1 and 2. Subsequently, when the suit was posted again for argument, the fifth defendant filed another application by stating that PWs 3 and 4 were not subjected to cross-examination and he be given an opportunity to cross-



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examine them. Such a prayer of the fifth defendant was allowed and defendants 3 and 4 were cross-examined by the fifth defendant. Thereafter, when the suit was posted for arguments again, it was noticed that the fifth defendant, though contested the suit, did not examine himself and therefore, he has filed the instant application in I.A. No. 457 of 2022 to re-open the defendant's side evidence so as to enable him to examine himself as a witness on behalf of the defendants in the suit. The said application was dismissed by the trial court on 10.01.2023. Aggrieved by the same, the fifth defendant has come up with this Civil Revision Petition.

8. Heard the learned counsel for the revision petitioner/fifth defendant as well as the learned counsel for the first respondent/plaintiff and perused the materials placed on record.

9. It is an admitted fact that during trial in the suit, at the instance of the revision petitioner-fifth defendant, the defendant's side evidence was re-opened twice. It is also seen from the records that the suit was posted for arguments twice, but it was deferred and at the instance of the revision petitioner-fifth defendant, to cross-examine the witnesses namely PWs 1 and 2 as well as PWs 3 and 4. Thereafter, once again, the suit was posted for



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argument and at this stage, the instant application was filed to once again re-open the defendant's side witness to enable the revision petitioner-fifth defendant to examine himself and to adduce evidence in the suit.

10. In the light of the above facts, it is evident that at the instance of the revision petitioner-fifth defendant the defendant's side evidence was re-opened twice. The revision petitioner-fifth defendant ought to have been prudent in putting forth his defence, however, he had exhibited slackness. Therefore, this Court does not find any reason to interfere with the order passed by the trial court, especially when the trial court had already shown leniency in re-opening the defendant side evidence at the instance of the revision petitioner-fifth defendant. However, taking into account the fact that the defendants 1 to 4 did not contest the suit and it is the revision petitioner-fifth defendant, who is lonely contesting the suit, this Court is of the view that one more opportunity can be given to him to examine himself as a defence side witness to substantiate his defence. For this purpose, the revision petitioner-fifth defendant is directed to appear before the trial court on 05.09.2023 or any other subsequent date for examining himself as defence side evidence in chief, or to file a proof affidavit to substitute his chief-examination. Thereafter, the trial court is directed to permit the plaintiff to cross-examine the fifth



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defendant at an early date without brooking any further delay, particularly on or before 29.09.2023. The trial court shall thereafter proceed to wrap up the suit proceedings on merits and in accordance with law, within a period of two months.

11. With the above direction, the Civil Revision Petition is disposed of. Consequently, the connected Miscellaneous Petition is closed. No costs.

09.08.2023

kv

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

To

1. The II Additional District Munsif, Puducherry.
2. The Section Officer,
V.R. Section,
High Court, Madras.



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V.BHAVANI SUBBAROYAN,J.

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