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C.R.P.(PD)Nos.1929 & 1930 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P(PD)Nos.1929 & 1930 of 2019
and CMP.No.12680 of 2019

1.D.Palani
2.Minor P.Praveenkumar .. Petitioners in both CRPs
(2nd Petitioner Rep by mother Sarasu)

VS

1.M.Shanthi
2.M.Kotteswari .. Respondents in both CRPs

Petitions filed under Article 227 of the Constitution of India against the Order and decretal order of the Court of the Subordinate Judge, Cheyyar dated 21.01.2019 passed in I.A.Nos.311 & 312 of 2018 in O.S.No.120 of 2014 and prays that the same may be set aside.

(In both CRPs)
For Petitioners : Mr.S.Baskaran

For Respondents : Mr.K.G.Senthil Kumar

COMMON ORDER

The applications were filed in I.A.Nos.311 & 312 of 2018 in O.S.No.120 of 2014. The suit is one for partition of the suit schedule



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mentioned property. In the suit, the first defendant projected a Will and the said Will was sent for examination of handwriting expert. In the meanwhile, the suit proceeded and the evidence was closed on 08.03.2016.

2. There is no dispute on either side that the evidence of the plaintiff has been completed and the evidence of the defendants was closed, though opportunity had been given to them. Therefore, an application was filed to re-open the evidence. It has been dismissed. Against which, the present revisions.

3. It is contended by Mr.S.Baskaran, learned counsel appearing for the petitioners that as on today there is no evidence of the defendants on record. He admits the fact that opportunity was granted between 08.03.2016 to 21.03.2016 and yet no evidence had been let in by the defendants.

4. Mr.K.G.Senthil Kumar, learned counsel appearing for the respondents would point out that despite several opportunities having been granted, the first defendant was recalcitrant and did not enter the box at all and that the entire idea is to prolong the litigation.

5. I heard both sides and perused the records.

6. Here is the case where even a sentence of the evidence of the



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defendants has not been recorded. If I were to reject the petition for re-open and re-call, it will only lead to further litigation of the party pleading that the judgment is an exparte judgment and that they are entitled to have the same set aside.

7.Be that as it may, since some default has been committed by the defendants, they need not be punished by closing the evidence entirely. Interest of justice would be served if the application is allowed on heavy cost with a further direction that the suit itself be disposed of after recording evidence of defendants within a short period. Therefore, I pass the following order:

(i) the orders in I.A.Nos.311 & 312 of 2018 are set aside.

(ii) these revisions stand allowed on the condition that the petitioner pays to the respondents a sum of Rs.10,000/- as costs for allowing the application.

8.Mr.Baskaran reports that the case is listed on 18.08.2023. The costs should be paid on or before 18.08.2023. On payment of such costs, the Court below is requested to record the evidence of the defendants and dispose of the suit on or before 31.10.2023. Full discretion is given to the Court below to close the evidence of the defendants in case it feels that the defendants are trying to drag on the matter.



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9. With the aforesaid condition, these civil revision petitions are allowed. No costs. Consequently, connected miscellaneous petition is closed.

02.08.2023

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

vs

Note: Issue order copy on 04.08.2023.

To

The Subordinate Judge,
Cheyyar.



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V. LAKSHMINARAYANAN,J.

VS

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