

**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.2487, 2533 & 2534 of 2023
and C.M.P.Nos.15672, 15682 & 15671 of 2023**

1. Alamelu
2. Thangamani

... Petitioners
in all CRPs

Vs.

Santhoshkumar

... Respondent
in all CRPs

Common Prayers:- Civil Revision Petitions filed under Section 227 of the Constitution of India to set aside the fair and final orders dated 28.04.2023 made in I.A.Nos.5, 4 & 3 of 2022 in O.S.No.242 of 2014 on the file of the I Additional Subordinate Court, Salem.

For Petitioners : Mr.R.Nalliyappan
in all CRPs

For Respondent : Mr.D.Shivakumaran
in both CRPs

COMMON ORDER

These present civil revision petitions have been filed to set aside



the fair and final orders dated 28.04.2023 made in I.A.Nos.5, 4 & 3 of 2022 in O.S.No.242 of 2014 on the file of the I Additional Subordinate Court, Salem.

2. The Plaintiffs in O.S. No. 242 of 2014 on the file of the I Additional Subordinate Judge, Salem are the revision petitioners in these Civil Revision Petitions. They are aggrieved by the common order dated 28.04.2023 passed in I.A. Nos. 5 of 2022, 4 of 2022 and 3 of 2022 respectively in O.S. No. 242 of 2014 thereby the applications filed by the respondent-defendant were allowed subject to payment of costs.

3. The revision petitioners/plaintiffs have filed the suit in O.S. No. 242 of 2014 for partition of the plaint described property. The plaintiffs/revision petitioners herein are the mother and daughter and the respondent/defendant is the son of the first plaintiff. The property described in the suit said to belong to late. Govindasamy, husband of the first plaintiff and father of the second plaintiff and defendant.

4. In the suit, written statement was filed by the respondent-defendant on 25.05.2015 and the suit was taken up for trial. During trial,



the plaintiff examined witnesses on their side. On the side of defendant/respondent, he examined himself as DW1 and when the suit was listed for arguments, the instant applications have been filed for recalling DW1 and to mark some documents. According to the defendant/respondent, these documents are necessary to get an effective adjudication of the suit. The trial court, upon elaborate consideration allowed the applications on cost of Rs.3,000/-. Aggrieved by the same, the plaintiffs are before this Court.

5. The learned counsel for the petitioners vehemently contended that the applications have been filed only to protract the suit. The applications have been filed to fill up the lacuna. When the suit was listed for hearing the arguments of the defendants, the applications have been filed and therefore the trial court ought not to have entertained it. The court below, without taking note of the delay in filing the applications at the fag end of trial, allowed the applications and it calls for interference by this Court. Accordingly, the learned counsel prayed for allowing the civil revision petitions by setting aside the order passed by the court below.



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6. Per contra, the learned counsel for the respondent-defendant pointed out that after the examination of respondent-defendant as DW1, the counsel for the plaintiff/revision petitioners issued a notice dated 11.11.2021 under Order 11 Rule 16 of CPC for production of certain documents. On the basis of the memo dated 11.11.2021, the respondent-defendant produced the three documents sought for through a Memo dated 24.03.2022. Further, during the cross-examination of DW1, a specific question was put to the respondent-defendant in relation to the Will dated 20.11.2000 executed by Govindasamy. Therefore, the respondent-defendant thought it fit to mark the documents such as Will, gift settlement deed executed by Karuppayammal and death certificate of Govindasamy to lend support to his defence. While so, it cannot be said that the documents are sought to be produced at the fag end of the delay. The trial court in para No.15 has clearly stated that the proposed documents are vital documents to decide the dispute between the parties. The trial court also recorded that the documents are sought to be produced upon notice issued by the revision petitioners/plaintiffs to produce the same. Therefore, it was held that the respondent-defendant



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cannot be made responsible for the production of those documents at the fag end of the trial. In any event, the production of these documents are very much essential and therefore, the learned counsel for the respondent/defendant prayed for dismissal of the Civil Revision Petitions.

7. Heard both sides and perused the materials available on record.

8. Admittedly, the plaintiffs/revision petitioners herein have filed the suit in O.S. No. 242 of 2014 on 26.06.2014 for partition. The respondent-defendant has filed the written statement on 25.05.2015. During trial, the respondent-defendant examined himself as DW1 on 11.02.2020 and Exs.B2 to B15 were marked. During the course of cross-examination of DW1, a notice dated 11.11.2021 was served on the respondent-defendant under Order 11 Rule 16 for production of certain documents and they were produced by the respondent-defendant on 24.03.2022. As the mere production of those documents will not serve the purpose, the respondent-defendant has thought it fit to mark those documents by recalling himself in the suit. Accordingly, three



applications have been filed to re-call DW1 and to mark the above said documents. Having regard to the above facts, this Court is of the view that there is no delay on the part of the respondent-defendant in filing the applications. When a notice dated 11.11.2021 was served for production of documents, the same were produced on 24.03.2022 and immediately thereafter, the instant applications have been filed by the respondent-defendant. Taking note of the above facts, the trial court has rightly allowed the applications. The trial court has also rendered a specific finding that the documents are essential for proper adjudication of the dispute between the parties. However, considering the relief claimed in the suit and in order to give an opportunity to the defendant to prove his case, the trial court is directed to dispose of the suit expeditiously, within a period of three weeks from the date of receipt of a copy of this order.

9. With the above direction these Civil Revision Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are also closed.

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To
The District Munsif
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T.V. THAMILSELVI, J.

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