



C.R.P.No.3636 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.3636 of 2023

and

C.M.P.No.22782 of 2023

1.S.Saroja

2.S.Subramani @ Suresh

... Petitioners

-Vs-

1.A.Muniraj

2.R.Geetharani

3.G.Amsalakshmi

4.S.Pushpa

5.K.Usha

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and final order of III Additional District Court, Coimbatore in I.A. No.3 of 2023 in O.S. No.475 of 2015 dated 20.06.2023.

For Petitioner

:

Mr.K.Venkatasubban



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ORDER

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Challenging the impugned order passed in I.A.No.3 of 2023 in O.S.No.475 of 2015 on the file of III Addl. District Judge, Coimbatore, the defendants preferred this Civil Revision Petition.

2. The learned counsel for Revision Petitioners would submit that before the trial court, as defendants, they are relying the Will dated 02.08.2011 to prove their claim. So, they wanted to examine Notary advocate, who has signed as attestor in the said document and to that effect, they have filed an application praying to reopen the defendant side evidence to let in additional evidence by way of examining Notary Advocate before the trial court. But, the trial judge has not given proper opportunity to them and dismissed the said application. Challenging the same, the defendants preferred this Civil Revision Petition.

3. The learned counsel for respondent would submit that the suit was filed in the year of 2015 and the trial was begin much earlier in the year of 2021 and only to protract the proceedings, the defendants have filed the said application without any reason, which was rightly



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appreciated by the trial judge. Hence, he prayed to dismiss this Civil Revision Petition.

4. Records perused. On perusal of records, it would reveals that the trial was begin in the year of 2021 and during Covid period, summon was issued to the Notary advocate, but the same was returned as no residence. Thereafter, the case was adjourned on various occasions and the revision petitioners again wanted to issue summons to the notary advocate. For that, they have filed an application to reopen the defendant side evidence. But, the plaintiff raised objection. On considering that, the trial judge not allowed the said application and concludes that only to drag on the proceedings, that application was filed. Furthermore, only to fill up lacuna, they have filed the said application to issue summons to notary advocate, who has signed in the Will. However, under Sec.68 of Indian Evidence Act, one of the attestor of the Will is to be examined. If the opportunity is not given to the revision petitioner to examine him, his valuable right to defend the case will be defeated. Therefore, the findings rendered by the trial judge is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the findings of the trial judge in I.A.No.3 of 2023 in



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O.S.No.475 of 2015 is set aside. The learned trial judge is directed to issue summons to the Notary Advocate, who has signed as attestor in the Will and to examine him as a witness by giving opportunity to other side to cross-examine him and dispose the case within a period of two months from the date of receipt of copy of this order. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

10.10.2023

Index : Yes/No
Speaking Order : Yes/No
rpp
To

The III Additional District Judge, Coimbatore



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T.V.THAMILSELVI, J.

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