



C.R.P.No.3755 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2023

CORAM : JUSTICE N.SESHASAYEE

C.R.P.No.3755 of 2019
and CMP.No.24689 of 2019

U.M.Nanjunda Shetty (Died)

1.N.Shanthakumari
2.Bhuvaneswari
3.Selvi. N.Poornima
4.Selvi. N.Anitha

.. Petitioners 1 to 5 / Petitioners /
Plaintiffs 1 to 5

Vs

1.U.M.Srinivasa Shetty
2.Nanjammal
3.Sankarammal
4.Mageswari
5.Nandha
6.Rupa

.. Respondents / Respondents
/Defendants

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and final order of the learned District Munsif at Krishnagiri, dated 09.08.2019 in I.A.No.1 of 2019 in O.S.No.292 of 2011 and allow the above CRP.



C.R.P.No.3755 of 2019

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For Petitioners : Mr.V.Nicholas

For Respondents : Mr.S.Kanniah for R1, R2, R4 to R6
R3 - No appearance

ORDER

This civil revision petition is preferred against an order dismissing the application filed under Order XVIII Rule 17 CPC for reopening and recalling P.W.2.

2. In a suit for partition which was laid sometime in 2004, was later came to be transferred to District Munsif Court, Krishnagiri, where it was taken on record in O.S.No.292 of 2011, and the trial had commenced in 2018. According to the revision petitioners, P.W.1 have been examined, and since it is a suit for partition between the family members, some talks arose between the parties and the plaintiffs did not offer themselves for cross-examination of further witnesses on their side as they felt that may ruin the prospects of settlement. But since the settlement did not work out, the plaintiffs took out the present application for recalling P.W.2. This application came to be dismissed by the trial Court as it felt that it is a



C.R.P.No.3755 of 2019

belated rearguard action, and refused to appreciate the reason for non-appearance earlier.

3. Appearing for the respondents, Mr.S.Kanniah, learned counsel argued that after tendering his examination in chief, the plaintiff refused to appear for cross-examination and he proceeded to examine P.W.2, who also did the same. It is in this circumstances, the defendants entered appearance and gave their evidence, following which the Court posted the matter for arguments. It is at this stage, the plaintiffs have taken out this application for re-opening and recalling their evidence. When the burden is on the plaintiffs, it is they who ought to have discharged the same at the first instance. Now they having led the defendants fully examined, and to let him an opportunity of cross-examining at this stage would mean that he will come ready with the answers for every answer which the defendants given in the cross-examination, submitted the counsel.

4. There is some merit in the submissions of the learned counsel for the defendants, but there is a larger issue that still lingers. This Court is only intended to allow the plaintiffs to present P.W.2 for cross-examination,



C.R.P.No.3755 of 2019

however they will not be allowed to offer any new evidence at this stage.

Therefore, the apprehension of the defendants is reduced to a large extent.

5. In fine, this Court allows the CRP and slaps a cost of Rs.15,000/-, of which Rs.10,000/- shall be paid to the counsel for the respondents and the balance Rs.5,000/- in the form of books useful to junior counsel. The trial Court is directed to examine P.W.2. Consequently, connected miscellaneous petition is closed.

Post the matter for reporting compliance on 30.06.2023.

12.06.2023

Index : Yes / No
Speaking Order / Non-speaking Order
ds

To:

- 1.The District Munsif
Krishnagiri.
2. The Section Officer
VR Section, High Court, Madras.



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C.R.P.No.3755 of 2019

N.SESHASAYEE.J.,

ds

C.R.P.No.3755 of 2019

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