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C.R.P.No.3966 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2023

CORAM:

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

C.R.P.No.3966 of 2023

and

C.M.P.No.24364 of 2023

1. D.Velu

2. V.Gangadaran

3. V.Devaraj

... Petitioners

-Vs-

D.Murugesan

... Respondent

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the decree and order dated 23.08.2023 passed in I.A.No.523 of 2023 in O.S.No.157 of 2018 on the file of Principal District Munsif Court, Vellore.

For Petitioners : Mr.B.Thirumalai

ORDER

Challenging the impugned order passed in I.A.No.523 of 2023 in O.S.No.157 of 2018 passed by the learned Principal District Munsif, Vellore, the Revision Petitioners/defendants preferred this Civil Revision Petition.



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2. Since the relief is claimed challenging the order passed by the trial judge, notice to the respondent is dispensed with.

3. Before the trial court, the Revision Petitioners/defendants filed an application in I.A.No.523 of 2023 under Order 16 Rule 1 and 2 of C.P.C. permitting them to examine witnesses and to produce documents, since because they wanted to examine the revenue officials by marking documents to prove their possession and enjoyment of the suit property. The said application was strongly opposed by the plaintiff stating that at the time of defendants side evidence, they ought to have produced those documents and only in order to cause delay, they have filed the said application. Considering both side submissions, the trial judge held that the suit was filed seeking for the relief of partition between brothers viz., plaintiff and 1st defendant and they are close relatives. After closure of plaintiff side evidence, they have filed the said application praying to examine Tahsildar as witness, instead of that, the certified copy of those documents can be produced by them, so, there is no necessity to call for Government Officials to give evidence, thereby it was dismissed. Challenging the said findings, the plaintiff preferred this Civil Revision Petition.



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4. Admittedly, from the year of 2018, the suit is pending before the trial court filed by the respondent/plaintiff for the relief of partition and other consequential relief of injunction. The plaintiff is brother of 1st Revision Petitioner and others sons of 1st defendant. Now, the 2nd and 3rd defendants claiming absolute right over the property and to prove the same, they wanted to mark documents through revenue officials. As rightly observed by the trial judge that it is not necessary to call for Government Officials, however, the certified copies of documents can be produced by them. Now, on seeing the issue between the parties, by examining the Tahsildar and to mark the documents with regard to patta and other revenue records, the Tahsildar is a right person to adduce evidence. So, one more opportunity is to be given to the Revision Petitioners to prove their defence and it would not cause any prejudice to the plaintiff. If opportunity is not given to them, their valuable right to protect the property will be defeated. But, without considering their defence, the trial judge dismissed the application, as such is erroneous one and the same is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the findings rendered by the trial judge in



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I.A.No.523 of 2023 in O.S.No.157 of 2018 is set aside and the said application is ordered to be allowed. The Revision Petitioners/defendants are directed to pay batta to the revenue officials to adduce their evidence within a period of one week from the date of receipt of copy of this order and thereafter, both parties are directed to cooperate with trial proceedings. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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

The Principal District Munsif, Vellore.



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T.V.THAMILSELVI, J.

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