



C.R.P.No.4088 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2023

CORAM:

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

C.R.P.No.4088 of 2023

and

C.M.P.No.24994 of 2023

1.Anbalagan

2.Asaithambi

... Petitioners

-Vs-

1.E.M.Subadra

2.E.M.Kausalya

3. K.R.Gopalakrishnan

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 22.09.2023 passed in IA No.1 of 2023 in OS No.455 of 2015 by the II Additional Subordinate Judge, Salem and thus render justice.

For Petitioner

: Mr.N.Jayakumar



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ORDER

Challenging the impugned order passed in I.A.No.1 of 2023 in O.S.No.455 of 2015 passed by the learned Addl. Sub-Judge, Salem, the Revision Petitioners/defendants 2 and 3 preferred this Civil Revision Petition.

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

3. Before the trial court, the Revision Petitioners/defendants 2 and 3 filed an application in I.A.No.1 of 2023 under Order 8 Rule 1(A) of C.P.C. seeking the relief to condone the delay in producing the documents on their side stating that those documents are very important documents to prove their defence and also mentioned about the nature of documents while filing the written statement in paragraph 9. Therefore, at the time of examination of defendants side evidence, the revision petitioners have filed the said application praying to receive as additional documents. That



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application was contested by the 1st and 2nd respondents/plaintiffs stating that after commencement of trial, the documents are not permitted to mark those documents. Moreover, the original Will also was not produced and the reasons also not properly explained. On considering both side submissions, the trial judge dismissed the application holding that after lapse of more than 7 years, they have filed the said application and they ought to have filed the same while filing their written statement. Challenging the said findings, the plaintiff preferred this Civil Revision Petition.

4. The learned counsel for Revision Petitioner would submit that the trial judge failed to take note of the fact that while filing written statement itself, as a subsequent purchasers, they narrated about how they purchased the property and to prove the same, he produced revenue documents, besides, he is having only certified copy of Will, since because he is not a beneficiary of the Will. But the trial judge ought to have given opportunity, however, erroneously dismissed the application. Hence, they prayed to set aside the findings of the trial judge.



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5. Records perused. On perusal of entire facts, it reveals that now the suit was filed in the year of 2015 against the defendants 1 to 3 and as the revision petitioners herein are 2nd and 3rd defendants in that suit, now they are seeking permission of the court to produce additional documents and to mark the same on their side. Admittedly, the plaintiffs' side evidence was closed. Before the commencement of the defendants' side evidence, they have filed the said application. Furthermore, on perusal of written statement, it reveals that they have narrated how they purchased the property and to prove the same, they have produced those documents. if they are permitted to mark those documents, it would not cause any prejudice to the respondents. So, if opportunity is not given to the Revision Petitioners, their valuable right to protect their property will be defeated. But, without giving opportunity to prove their defence, the trial judge erroneously 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 I.A.No.1 of 2023 in O.S.No.455 of 2015 is set aside and the said application is ordered to be



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allowed. Both the parties are directed to cooperate with the 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 II Additional Subordinate Judge, Salem.



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T.V.THAMILSELVI, J.

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