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C.R.P.(PD) No.62 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2023

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THE HONOURABLE **MRS.JUSTICE T.V.THAMILSELVI**

C.R.P.(PD) No.62 of 2023

and

C.M.P.No.501 of 2023

1.Kumaravel

2.Kondappan

... Petitioners

Vs.

P.Raja

... Respondent

Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and final order dated 23.11.2022 passed by the District Munsif Court, Rasipuram in I.A.No.6 of 2022 in O.S.No.27 of 2015.

For Petitioners : Mr.P.Jawahar

For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed against the impugned fair and final order dated 23.11.2022 passed by the District Munsif Court, Rasipuram in I.A.No.6 of 2022 in O.S.No.27 of 2015



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2. The petitioners are the defendants in O.S.No.27 of 2015.

Originally, the suit was filed by the respondent P.Raja for the relief of partition. The petitioners/defendants are sons of Perumal born through the first wife. The respondent/plaintiff is also the son of Perumal born through the second wife. The petitioners/defendants have claimed right over the suit property based on the Will dated 04.11.1985, whereas, the respondent/plaintiff has claimed right over the suit property based on an unregistered Will dated 06.12.1986.

3. After filing the Written Statement, the case was taken for trial. At that time, the respondent/plaintiff furnished a list of witnesses on 20.03.2019, wherein, there were three witnesses to be examined who are the plaintiff and two other attesters of the Will named Mr.Perumal and Mr.Mohan. The respondent/plaintiff was examined as P.W.1 and Mr.Perumal was examined as P.W.2. The other attester of the Will named Mr.Mohan was not examined in spite of several opportunities being given to the respondent/plaintiff. The petitioners/defendants examined the witnesses including the attester of the Will. Thereafter, the evidences were closed.



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4. After the matter was posted for arguments, the respondent/plaintiff has filed I.A.No.6 of 2022 to recall and examine the another witness Mr.Mohan as P.W.3 on his side. The said I.A.No.6 of 2022 was objected by the petitioners/defendants stating that the list of witness was furnished and in spite of several opportunities were given, the said witness was not examined by the plaintiff. Now, to fill up the lacuna, the respondent/defendant has taken steps to examine the witness.

5. In spite of several objections, the Trial Court has allowed the said I.A.No.6 of 2022 with the cost of Rs.750/-. Challenging the same, the petitioners/defendants preferred the present Civil Revision Petition.

6. The learned counsel for the petitioner argued that though sufficient opportunity was given to the plaintiff, the said witness Mr.Mohan was not examined and when the case was listed for arguments, to fill up the lacuna, the said I.A.No.6 of 2022 was filed and the Trial Court has erroneously allowed the said I.A.No.6 of 2022.



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7. Notice was served. However, there is no representation on behalf of the respondent/plaintiff. Records perused. The fact reveals that the suit was filed in the year 2015 for partition. Both the petitioners/defendants and the respondent/plaintiff claim the right over the property based on the respective Wills. On the side of the respondent/plaintiff, two witness were examined, one is the respondent/plaintiff as P.W.1 and another one is one of the attester of the Will as P.W.2. As per the list of witnesses furnished by the plaintiff, there were two attester namely Mr.Perumal and Mr.Mohan. Mr.Perumal was examined. Mr.Mohan has not appeared in spite of several opportunities were given by the Trial Court. Now, the evidences were over.

8. When the case was posted for arguments, the respondent/plaintiff wanted to examine the said Mr.Mohan as P.W.3. But, no reason was assigned in the affidavit filed for non-examination of the said Mr.Mohan at the earliest point of time. As rightly pointed out by the learned counsel for the petitioners/defendants, already list of witness was furnished by the respondent/plaintiff and P.W.1 the plaintiff and the one of the attester was



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examined on the same day by the plaintiff. Now, to fill up the lacuna, the respondent/plaintiff wanted to examine the said Mr.Mohan. It cannot be permitted.

9. No reason was assigned for non-examination of said Mr.Mohan. Sufficient opportunity was given. Apart from that, the alleged Will was also sent to forensic lab and a Report was obtained. There is sufficient material before the Trial Court to prove the claim of the respondent/plaintiff.

10. Though the respondent/plaintiff has not assigned any reason for non-examination of said Mr.Mohan, the Trial Court has allowed I.A.No.6 of 2022 *vide* impugned order dated 23.11.2022. Therefore, the impugned order dated 23.11.2022 passed by the Trial Court is liable to be set aside and is set aside.

11. The Trial Court shall dispose the suit within a period of three months from the date of receipt of a copy of this order.



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T.V.THAMILSELVI, J.

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12. This Civil Revision Petition is allowed. No cost. Consequently,
connected Miscellaneous Petition is closed.

07.03.2023

Internet : Yes/No

Index: Yes/ No

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To
District Munsif Court,
Rasipuram.

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