

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)Nos.805 and 806 of 2023

and

C.M.P.(MD)No.3696 of 2023 in C.R.P.(MD)No.805 of 2023

1.C.Krishnan

2.C.Ramadass

.. Petitioners in both the C.R.Ps.

Versus

C.Murugan

.. Respondent in both the C.R.Ps.

Prayer in both the C.R.Ps.:- Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 28.09.2022, made in I.A.Nos.4 and 5 of 2022 in O.S.No.50 of 2010, on the file of the Additional District and Sessions Court (FTC), Nagercoil.

For Petitioners : Mr.S.M.Anantha Murugan
in both the C.R.Ps.

For Respondent : Mr.K.Sudalaiyandi
in both the C.R.Ps.

COMMON ORDER

These Civil Revision Petitions have been filed against the fair and decreetal order dated 28.09.2022, in I.A.Nos.4 and 5 of 2022 in O.S.No.50 of 2010, on the file of the Additional District and Sessions Court (FTC), Nagercoil.

2. The petitioners herein are the defendants in O.S.No.50 of 2010, on the file of the Additional District and Sessions Court (FTC), Nagercoil. Originally, the aforesaid suit was filed by the respondent herein as O.S.No.12 of 2009, on the file of the Principal District Court, Nagercoil. The suit has been filed for partition of the suit schedule properties. The petitioners and the respondent are brothers. In the suit, the respondent has not filed any documents as exhibits.

3. It is the specific case of the petitioners that after the trial was concluded and when the case was posted for arguments, the respondent/plaintiff has filed written argument on 04.11.2022. At that stage, the petitioners filed I.A.No.4 of 2022 to recall D.W.1 for cross-examination and I.A.No.5 of 2022 to grant leave to mark additional documents. The trial Court has rejected the applications, vide the fair and decreetal order, dated 28.09.2022, by stating that the petitioners herein/defendants were attempting to drag on the proceedings.

4. It is the further case of the petitioners that though the aforesaid Interlocutory Applications filed by the petitioners have been rejected on the ground that the petitioners were attempting to drag on the disposal of O.S.No.50 of 2010, the trial Court has *suo motu* reopened the evidence of P.W.1, and permitted to cross-examine him on 02.03.2023 and 20.03.2023 and has also allowed the respondent/plaintiff to mark seven documents. It is submitted that since the

petitioners have also cross-examined the plaintiff's side witness and the Court itself has allowed the respondent/plaintiff to let in fresh evidence and also mark additional evidence, the impugned order passed in I.A.Nos.4 and 5 of 2022 is liable to be interfered with.

5. The present Civil Revision Petitions are opposed by the respondent/plaintiff on the ground that these Civil Revision Petitions have been filed long after the orders came to be passed in the Interlocutory Applications *i.e.*, on 28.09.2022. That apart, it is submitted that the respondent/plaintiff had filed I.A.Nos.7 to 9 of 2022, which were allowed on 20.01.2023, for re-opening the evidence on behalf of the respondent/plaintiff and for receiving additional documents.

6. It is submitted that merely the respondent/plaintiff has been allowed to mark the documents, pursuant to the order passed in I.A.Nos.7 to 9 of 2022, the challenge to the impugned order passed in I.A.Nos.4 and 5 of 2022 is belated, which should not be allowed, as there would be a further delay in pronouncement of judgment in the suit.

7. I have considered the arguments advanced by the learned counsel for the petitioners/defendants and the learned counsel for the respondent/plaintiff.

8.The trial Court has exercised the discretion against the petitioners/defendants, by rejecting the application for re-opening the defendants' side witnesses and for granting leave to mark additional documents, vide impugned order, dated 28.09.2022, in I.A.Nos.4 and 5 of 2022. However, later, the trial Court itself has allowed the similar applications filed by the respondent/plaintiff in I.A.Nos.7 to 9 of 2023 on 20.01.2023. The only reason given while allowing the applications is, on perusal of the records, the Court found that the documents related to the suit schedule property, which were not filed earlier and the case was *suo motu* re-opened and therefore, the applications to receive the additional documents and to recall the defendants' side witnesses were allowed.

9. The relevant portion of the said order from the Court Website reads as under:-

"I.A.Nos.7 to 9 of 2022 are allowed. Recall PW1 by 31.01.2023.

I.A.No.7 of 2022 – Enquiry is heard. This is a petition to reopen the case for receiving and marking some additional documents. The petitioner filed the original suit for partition. After trial, the case was posted for judgment. As this Court on perusal of records found that the records related with the suit properties are not filed, the case was suo motu reopened. Under such circumstance, the petitioner has come forward with this petition along with petitions to receive additional documents and to recall PW1 to mark those documents. The documents now produced by the petitioner are necessary for deciding the issues effectively. No prejudice would be caused to the respondent in receiving these documents. There is no valid objection in the counter. Hence, this Petition is allowed.

I.A.No.8 of 2022 – Heard. Connected reopen petition in I.A.No.7 of 2022 is allowed. Hence, for the very same reason stated in that order, this petition is also allowed.

I.A.No.9 of 2022 – Enquiry is heard. The connected reopen Petition in

I.A.No.7 of 2022 is allowed. Hence, for the very same reasons stated in that order, this petition is also allowed."

10. That being the case and considering the fact that the respondent/plaintiff was allowed to be examined and thereafter, cross-examined, I see no reason why the documents, which the petitioners/defendants wanted to mark should not be allowed. Therefore, the present Civil Revision Petitions filed by the petitioners shall stand allowed with a direction to the learned Additional District and Sessions Judge (FTC), Nagercoil, to permit the petitioners/defendants to mark those seven documents, which they propose to mark by filing I.A.Nos.4 and 5 of 2022. No costs. Consequently, connected Miscellaneous Petition is closed.

11. Since the suit is of the year 2010, the trial Court shall endeavour to pronounce the judgment and decree within a period of six months from today, after giving sufficient opportunity to both parties to argue the case.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
smn2

30.03.2023

To

The Additional District and Sessions Judge (FTC),
Nagercoil.

C.R.P.(MD)Nos.805 and 806 of 2023

C.SARAVANAN, J.

smn2

Common Order made in
C.R.P.(MD)Nos.805 and 806 of 2023

30.03.2023