



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.06.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1039 of 2022

and

C.M.P.(MD)No.4148 of 2022

1.B.Bhuvaneswari

2.B.Paramaswaran

...Petitioners/Petitioners/Defendants 4 & 5

Vs.

A.Lazzar

... Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair order and decretal order of the learned I Additional Subordinate Judge, Tiruchirappalli made in I.A.No.3 of 2021 in O.S.No.698 of 2000 dated 09.03.2022.

For Petitioners

: Mr.K.K.Senthil

For Respondent

: Mr.Raguvaran Gopalan

ORDER

This Civil Revision Petition has been filed by the petitioner to set aside the order passed in I.A.No.3 of 2021 in O.S.No.698 of 2000 dated 09.03.2022 on the file of the learned I Additional Subordinate Judge, Tiruchirappalli.

2.The petitioners are the legal heir of original defendant Baskar, who died during the pendency of the suit after the suit summon was served and after the written statement filed by the deceased defendant. After his death, the petitioners



herein who are his wife and son, have been impleaded as legal heirs. The suit has been filed by the respondent for specific performance of obligation undertaken allegedly by the first petitioner's husband and the second petitioner's father late Baskar under a sale agreement dated 05.01.2000. Reading of the impugned order indicates that on behalf of the plaintiff, Ex.A1 to A5 were marked as early as on 06.10.2005. Thereafter, the respondent/plaintiff was also cross examined on various dates between 2010 to 2017. The respondent had filed I.A.No.958 of 2017 to recall the plaintiffs witness for adducing further witness pursuant to which, Ex.P6 to A7 are marked.

3. Thereafter, the petitioners also cross examined the plaintiff witness. When the case was listed for defendants side evidence, I.A.No.3 of 2021 was filed under Order 18 Rule 17 of CPC to recall P.W.1 to re-examine him, under Order 18 Rule 17 of CPC. The said application has been rejected by the Court with the following observation:-

“The petitioner filed the above suit against the defendant in the year of 2000 and the suit is pending for past more than 20 years before this Court. Moreover this Court has given sufficient opportunity to the petitioners/defendants for cross examination of P.W.1 on 08.07.2010, 30.06.2017, 10.07.2017 and 13.03.2019. Now the petitioners/defendants 4 and 5 filed this petition to recall the P.W.1 for further cross examination. Moreover, the reason stated by the petitioners/defendants 4 and 5 in his affidavit is not satisfied one and the petitioners intention is only to prolong the suit proceedings. Under these facts and



circumstances, this Court is not inclined to allow this petition and the petition deserves no merits according the dismissed.”

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4.The learned counsel for the petitioners would submit that Ex.A6 and Ex.A7 were marked and that cross examination of P.W.1 is required pursuant to mark of Ex.A6 and Ex.A7 and therefore, one opportunity has been granted.

5.I have considered the argument advanced by the learned counsel for the petitioners and the learned counsel for the respondent.

6.The suit is of the year 2000. It has prolonged predominately long period of time for almost quarter of century. Ordinarily allowing the defendants to cross examine the respondent/plaintiff at this distance of time cannot be countenanced. However, considering the fact that the property in question is a residential property where the petitioners are residing, they should be given a fair chance to defend themselves particularly after they were impleaded as legal heirs of the original defendant.

7.Considering the above, I am inclined to allow the civil revision petition. Consequently, I.A.No.3 of 2021 stands allowed. The Trial Court shall allow cross examination of the witness P.W.1. After cross examination of P.W.1, the Court shall allow the parties to produce their witnesses and thereafter, proceed to hear the



C.R.P(MD)No.1039



C.SARAVANAN,J.

Mrn

parties and pronounce judgment and decree within a period of six months from the date of receipt of a copy of this order.

8.In view of the above, the civil revision petition stands allowed. No Costs.
Consequently, connected miscellaneous petition is closed.

23.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Mrn

To

- 1.The I Additional Sub Judge, Tiruchirappalli.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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