



C.R.PD.No.1738 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.PD.No.1738 of 2022

and

C.M.P.No.8769 of 2022

1.V.Balakrishna Naidu

2.Vijaya Baskar

3.V.Kalpana

... Petitioners

Vs.

G.V.Subramani

.. Respondent

PRAYER: Revision filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order in I.A.No.1 of 2021 in O.S.No.127 of 2008 dated 03.01.2022 passed by the learned District Munsif Court at Sholinghur.

For Petitioners : Mr.R.Surya Prakash

For Respondent : Mr.M.Murugesan

ORDER

The present civil revision petition arises against the dismissal of an application under Order VIII Rule 9 of Code of Civil Procedure.



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2. The suit had been presented by the respondent, G.V.Subramani, for declaration and permanent injunction. It is his specific case that the suit properties were allotted to him under a registered partition deed dated 02.07.1974. Along with the plaint, he had filed documents, Exs.A1 to A8. During the course of enquiry, he had marked additional documents, Exs.A9 to A15. According to the defendants, who are the civil revision petitioners, there is no pleading regarding these documents and hence they want to rebut the same by way of an additional written statement. They would state that these documents were introduced by P.W.1 at the time of his chief examination without any pleading, and therefore the necessary background facts in order to rebut the same would have to be brought on record by way of an additional written statement. Hence, the application under Order VIII Rule 9. This application was received in I.A.No.1 of 2021.

3. On being served with the notice, the respondent filed a counter saying that the plaintiff had filed a rejoinder to the written statement as early as 2014 and at that stage itself, he had pleaded about Exs.A9 to A15. He would state that these documents had been filed along with



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proof affidavit on 03.04.2018 and the defendants had also cross examined. P.W.1 in relation to these documents. He would state that P.W.1, the plaintiff, is a senior citizen suffering from ailments and therefore the entire idea of the defendants/revision petitioners is only to drag on the matter. Hence, he sought for the dismissal of the application.

4. The learned District Munsif, Sholingar at Vellore District was convinced with the fact that the defendants/revision petitioners were trying to drag the matter and hence dismissed the application on 03.01.2022, against which the present civil revision petition.

5. Heard Mr.R.Surya Prakash for the petitioners and Mr.M.Murugesan for the respondent.

6. A perusal of the case files goes on to show that the plaint proceeds only on the basis of the fact that these properties have been allotted to the plaintiff by virtue of a partition deed. In his reply statement, the plaintiff has sought to project a case that there are some settlement deeds which would throw light on his title to the property. The defendants ought to have been vigilant and sought for filing a rejoinder to the reply filed by the plaintiff immediately. However, they have failed



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to do and hence, the application at this belated stage.

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7. The point remains that Exs.A9 to A15 had been pleaded not in the plaint but only in the reply statement filed by the plaintiff. Therefore, in order to give an opportunity to the defendants to have their say on Exs.A9 to A15, interest of justice requires that the said opportunity should be afforded to them. However, I can understand that the P.W.1 is a senior citizen and over three years have gone by, since, the time the defendants had cross examined the plaintiff. Therefore, the defendants should be mulcted with cost for having delayed the proceedings.

8. In the light of the above discussion, I am of the view that the application in I.A.No.1 of 2021 can be allowed on the condition that the defendants pay a sum of Rs.10,000/- to the plaintiff on or before 30.04.2024. On such payment, the additional written statement filed by them will be received by the Court. In case they did not pay the aforesaid sum, the Civil Revision Petition will stand dismissed.

9. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

02.04.2024

Index : Yes / No
Speaking Order : Yes / No



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Neutral Citation : Yes / No
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To
The District Munsif Court,
Sholinghur.



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V.LAKSHMINARAYANAN, J.

Sgl

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