



C.R.P.No.1372 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.1372 of 2021

and

C.M.P.No.10678 of 2021

1.M.Alamelu

2.T.Annathal alias Annuthai

... Petitioners

Vs.

1.A.Sivasamy

2.A.Chinnakkannu

3.A.Veluchamy

4.A.Jothimani

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decretal orders passed in I.A.No.5 of 2021 in O.S.No.660 of 2012 dated 02.03.2021 on the file of the Court of first Additional District Judge, Coimbatore.

For Petitioners : Mr. A.Muthu kumar

For Respondents : M/s.K.Myilsamy for R1 & R3
R4-Dispensed with
R2-No appearance



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ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the application filed by the petitioners seeking to re-open the case to enable the petitioners to cross-examine and leading further evidence.

2. The learned counsel for the petitioners filed a memo dated 02.02.2024 stating that the 4th respondent remained *exparte* before the trial Court. Therefore, he sought for dispense with of the notice to the 4th respondent. Accordingly, notice to 4th respondent is dispensed with.

3. The petitioners herein filed a suit for partition claiming 2/7th share against the respondents and deceased father of the respondents namely Arumuthu Gounder. The father of the petitioners was originally arrayed as 1st defendant in the suit. He died on 08.03.2015. The plaintiffs' side evidence was closed on 06.06.2017. Thereafter, the respondents herein filed an additional written statement on 05.09.2017 raising a new plea that father of the

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petitioners Arumuthu gounder executed two Wills bequeathing his entire estate in favour of defendants 2 to 4. The respondents also raised a plea that father of the petitioners executed three settlements in favour of respondents. They also raised new plea that item 1 of suit property belonged to one Kaliasammal which is against original plea in written statement that suit properties were ancestral properties. Thereafter, the defendants examined their witnesses and their evidence was closed on 02.02.2021. At this juncture, the petitioners have filed this present application seeking to re-open the case enable them to lead further evidence in respect of the new plea raised by the respondents in their additional written statement which was filed subsequent to the closure of evidence by the petitioners/plaintiffs. The said application was rejected by the Court below on the ground that in respect of new plea raised by the respondents, the petitioners cross-examined the defendants' side witnesses.

4. It is not in dispute that subsequent to the closure of petitioners'/plaintiffs' side evidence, a new plea was raised by respondents /defendants by relying two Wills executed by father of the respondents. In such circumstances, the petitioners are entitled to lead evidence in respect of



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the new plea raised by the respondents subsequent to the closure of their evidence. Therefore, the impugned order passed by the Court below is set aside. Accordingly, the Civil Revision Petition stands allowed.

5. Having regard to the fact that the suit is of the year 2012, this Court is inclined to direct the petitioners and respondents to co-operate with the Court below to dispose of the suit as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

02.02.2024

Index : Yes / No
Internet : Yes / No
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To

The learned first Additional District Judge, Coimbatore.



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S.SOUNTHAR, J.

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