



C.R.P.No. 2634 of 2024
and C.R.P.No.2651 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2024

C O R A M:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No. 2634 of 2024
and C.R.P.No.2651 of 2024
and C.M.P.Nos.13872 and 13879 of 2024

1.E.Mohana
2.E.Shobana
3.E.Usha
4.E.Praveen Kumar

... Petitioners in both
C.R.Ps/Defendants 5 to 8

Vs.

1.P.Parimala

....1st respondent/plaintiff

2.M.Kothandaraman

3.S.Ramadas

4.S.Banumathi

5.S.Kavitha

6.S.Kavitha

7.S.Vimala Kumari

8.K.Gunasekaran

9.G.K.Priya Dharshini

10.G.K.Madhu Mitha

....Respondents in both CRPs



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/Defendants 1 to 4 and 9 to 15

Prayer in C.R.P.No.2634 of 2023: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the decree and final order dated 02.04.2024 passed in I.A.No.7 of 2023 in O.S.No.4698 of 2015 by the II Additional City Civil Court, Chennai and to allow the CRP.

Prayer in C.R.P.No.2651 of 2024: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the decree and final order dated 02.04.2024 passed in I.A.No.6 of 2023 in O.S.No.4698 of 2015 by the II Additional City Civil Court, Chennai and to allow the CRP.

For Petitioners in both CRPs : Mr.S.Udhaya Kumar

For Respondents in both CRPs : Mr.T.Karunakaran for R1

COMMON ORDER

These Civil Revision petitions arises against the order dismissing the application filed to reopen and recall the P.W.1/plaintiff side evidence in O.S.No.4698 of 2015.

2.O.S.No.4698 of 2015 is the suit for partition and separate possession filed by the 1st respondent/plaintiff. In the suit proceedings, the defendants 5 to



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8 filed applications to recall and reopen the PW1 evidence for her cross examination. Originally, defendants 5 to 8 had been set exparte for non filing of written statement. Thereafter, they filed a written statement together with an application to set aside the exparte order that came to be allowed on 01.08.2003. Even before the exparte order was set aside, PW1 had already been examined. Therefore, in order to get an opportunity to cross PW1, they took out an application. This petition was resisted by the plaintiff stating that the suit for partition is pending for more than 9 years. She pointed out that the other defendants have completed the pleadings in the year 2018. It was also contended that the only intention of the civil revision petitioner is to deny the share to the plaintiff. The learned Trial Judge came to the conclusion that the idea of filing these petitions is only to drag on the proceedings that too at the stage of arguments and therefore, he dismissed the petitions.

3. Heard Mr.S.Udhaya Kumar, learned counsel for the petitioners and Mr.T.Karunakaran, learned counsel appearing for the first respondent and this Court had perused the materials available on record.



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4. It is not in dispute that the exparte order as against the petitioners were set aside on 01.08.2003. Before the exparte order was set aside, the suit had already been proceeded with and PW1 was already examined. When exparte order is set aside, the clock is set back to the time to which the defendants had been set exparte. Therefore, defendants 5 to 8, on the exparte order being set aside, were put back to the time when they were set exparte viz., on 20.11.2017.

5. In case, PW1 was not cross examined by the defendants, then they can always raise a plea before the Appellate Court on further appeal that they were not given the said opportunity by the learned Trial Court. In order to obviate the said plea, and since the suit is still pending before the learned Trial Court, I am inclined to give an opportunity to the petitioners namely defendants 5 to 8 to cross examine PW1. However, since they were set exparte on their default, they have to compensate the plaintiff by way of cost prior to getting the benefit of cross examination.

6. Accordingly, the Civil Revision Petitions are allowed on the condition that defendants 5 to 8 shall pay a cost of Rs.5,000/-(Rupees five thousand only)



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in each of the petitions to the learned counsel appearing for the plaintiff/1st respondent. This cost must be paid on or before 26.07.2024 and after the learned Judge confirms that the cost has been paid, he shall permit the defendants 5 to 8 to cross examine the plaintiff /PW1 on 29.07.2024. The cross examination should be completed on 29.07.2024.

7. Mr.Karunakaran would point out that the relationship between the parties are admitted and unnecessarily his party has been made to wait for a period of more than nine(9) years. Taking into consideration the fact that the suit is pending for a period of more than nine(9) years, the petitioners and the parties to the suit will cooperate with the learned Judge and ensure that the suit is disposed of on or before 31.10.2024. It is made clear that if the defendants 5 to 8 do not pay the costs, or if they do not cross examine the plaintiff on 29.07.2024, the benefit under this order will not enure their favour. No costs. Consequently connected miscellaneous petitions are closed.

19.07.2024



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Index: Yes/No

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Speaking order: Non-speaking order

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V.LAKSHMINARAYANAN,J.

Msv

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