



C.R.P.No.2896 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.2896 of 2024 and
C.M.P.No.15416 of 2024

1.Kamalam
2.T.Rajendran

... Petitioners

Vs.

1.Rathinam
2.K.V.Ramasamy
3.K.V.Natarajan
4.V.Loanathan
5.Uthami
6.R.Yuvaraj
7.Rathika
8.K.Subramanian
9.Subbiah Kavudar
10.Axis Bank,
No.112 & 113, V.V Complex,
Coimbatore Main Road,
Mettupalayam,
Coimbatore-641 301.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order passed in I.A.No.4 of 2024 in OS.No.523 of 2016 on the file of V Additional District & Sessions Judge, Coimbatore and allow the civil revision petition.



C.R.P.No.2896 of 2024

For Petitioners : Mr.V.Sivakumar

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ORDER

The petitioners/plaintiffs filed a petition in I.A.No.4 of 2024 in O.S.No.523 of 2016 under Section 151 of C.P.C before the learned V Additional District & Sessions Judge, Coimbatore to reopen the plaintiffs' side evidence for the purpose of examining further witness and the same was dismissed *vide* impugned order, dated 20.03.2024. Against which, the present civil revision petition filed.

2.The learned counsel for the petitioners submitted that during cross examination of PW1/2nd plaintiff on 05.02.2020, a specific question put to him that Subbammal's mother is the second wife of Venkataraman and the legal heirs of Subbammal are Rajammal, Rangathaye and Selvaraj. It is also found in the evidence that these three persons not shown as witness not examined in the suit. The learned counsel further submitted that the legal heirs of Subbammal got shares in the property of Venkataraman which is also formed part of the suit. Hence, the petitioner filed I.A.No.4 of 2024 in



C.R.P.No.2896 of 2024

O.S.No.523 of 2016 giving details and reason for examination of the said legal heirs of Subbammal. In the impugned order, the lower Court held that that PW1's evidence completed on 21.04.2022 and the defendants side evidence closed on 21.06.2022 and the case adjourned periodically for arguments and on 06.08.2022, the 9th defendant came up with two applications to set aside the exparte order and to reopen 9th defendant side evidence and the same was ordered on 25.09.2023 and thereafter the 9th defendant shown no progress in the case. Finding that the suit is pending for more than seven years and further examination of witnesses as sought for by the plaintiffs would cause further delay, dismissed the petition which is not proper. The lower Court had not given reason why the evidence of these witnesses not required. On the other hand, the specific cross examination on 05.02.2020 is that the legal heirs of Subbammal not examined as witness and further admission is that they got shares in the family property of Venkataraman. In such circumstances, the lower Court ought to have allowed the petition.



3.The learned counsel for the petitioner fairly submitted that only one hearing is sufficient and he would examine any one of the legal heirs of Subammal.

4.Considering the submissions and perusal of the materials, it is seen that a specific question has been put to PW1/2nd plaintiff regarding the legal heirs of Subbammal. Added to it, it is admitted that the legal heirs of Subbammal have got right in the family property of Venkataraman.

5.In view of the above, this Court is inclined to give opportunity to the petitioner to examine the legal heirs of Subbammal viz., Rajammal, Rangathaye and Selvaraj. Accordingly, this civil revision petition stands allowed setting aside the impugned order, dated 20.03.2024 in I.A.No.4 of 2024 in O.S.No.523 of 2016 passed by the learned V Additional District & Sessions Judge, Coimbatore.

6.The learned V Additional District & Sessions Judge, Coimbatore is directed to issue summons on the petition filed to examine any one of the



C.R.P.No.2896 of 2024

legal heirs of Subbammal viz., Rajammal, Rangathaye and Selvaraj and fix a day for examination. On that day, without fail, the petitioners/plaintiffs to examine any one of the legal heirs of Subbammal. The connected civil miscellaneous petition is closed. No costs.

26.07.2024

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

Index: Yes/No

Internet: Yes

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To

The V Additional District and Sessions Judge,
Coimbatore.



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C.R.P.No.2896 of 2024

M.NIRMAL KUMAR, J.

vv2

C.R.P.No.2896 of 2024

26.07.2024