



C.R.P.No.3398 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 24.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.3398 of 2024
and
C.M.P.No.18372 of 2024

1.Buvana Latha @ Latha
2.Prema @ Premakumari
3.Gokula @ Gokularaj Yadav
4.Sathish @ Sarvanth Raj Yadav ..Petitioners

Vs.

Vittabai (Deceased)
1.Komala
2.Bangarammal
3.Parvathy
4.Revathy ..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the impugned order dated 02.08.2024 made in I.A.No.3 of 2024 in O.S.No.7 of 2009, pending on the file of the learned Subordinate Judge of Maduranthakam by allowing the above Civil Revision Petition.



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C.R.P.No.3398 of 2024

For Petitioners : Mr.E.Prabu
For 1st Respondent : Mr.J.Bhuvaneswari
For 2nd Respondent: Mr.T.Tamilselvam – No appearance

ORDER

This Civil Revision Petition challenges the order passed by the learned Subordinate Judge, Maduranthakam in I.A.No.3 of 2024 in O.S.No.7 of 2009.

2. O.S.No.7 of 2009 is a suit for partition and separate position. In the said suit the 1st defendant V.Selvaraj passed away and his legal representatives were brought on record as defendants 4 to 9. The suit has been taken up for trial and the plaintiff has completed her side of examination. The matter was posted for defendants' evidence on 09.07.2024.

3. Due to the fact advocates were abstaining from Court, the evidence of the defendants was closed. In order to reopen the evidence, they filed an application in I.A.No.3 of 2024. Notice was ordered in the application and the contesting parties made an endorsement that the same



C.R.P.No.3398 of 2024

may be allowed on terms. The learned Judge would have nothing of the cooperation shown by the learned counsel. He noted that the evidence was closed on account of the fact that abstention from Court was due to a resolution passed by the Bar. Consequently, he dismissed the application, hence this revision.

3. The matter came up before this Court on 21.08.2024. I called upon Mr.E.Prabu, learned counsel appearing for the petitioners to serve the entire papers on the learned counsel for the plaintiff. Ms.J.Bhuvaneswari, has entered appearance for the contesting respondent.

5. Heard Mr.E.Prabu, learned counsel appearing for the petitioners and Ms.J.Bhuvaneswari, learned counsel appearing for the 1st respondent.

6. There are subsequent events which have overtaken the impugned order passed by the learned Subordinate Judge. After the dismissal of I.A.No.3 of 2024, the learned Judge posted the matter for arguments. At the stage of arguments, on a perusal of records, the learned Judge found that even issues not framed in the suit and the parties have gone for trial.



C.R.P.No.3398 of 2024

Therefore, he *suo motu* reopened the suit. Apart from that, an application was filed under Order IX Rule 7 by the 2nd defendant Bangarammal and that application came to be allowed by the learned Judge on 10.09.2024. Thereafter, the learned Subordinate Judge on perusal of the written statement filed by all the parties framed fresh issues and posted the matter for evidence.

7. The plaintiff had pleaded that she has already recorded evidence and therefore, she had no fresh evidence to let in. Taking advantage of the fact that the suit has been reopened and fresh issues have been framed, the 8th defendant, who is one of the legal heirs of the deceased 1st defendant, entered the witness box and was examined as DW2. Exs.B1 to B10 were marked to substantiate the case. As of today, the matter is adjourned for cross-examination of DW2 by the plaintiff and the 3rd defendant. Since the defendants 5, 7 to 9 have already deposed through the 8th defendant, nothing remains to be adjudicated in this revision.

8. Mr.E.Prabu, will point out that at a later date on account of the fact that I.A.No.3 of 2024 had been dismissed, objections may be raised



C.R.P.No.3398 of 2024

by the plaintiff that the evidence given by the 8th defendant should not be taken into consideration.

9. Ms.J.Bhuvaneswari, learned counsel appearing for the 1st respondent states that no such objection will be raised by the plaintiff and she would cross-examine the 8th defendant tomorrow itself without prolonging the matter any further. The statement of Ms.J.Bhuvaneswari is taken on record.

10. In the light of the above discussion, since the Court below has reopened the evidence and permitted the 8th defendant to let in evidence, the order in I.A.No.3 of 2024 dated 02.08.2024 is set aside. It is made clear that the evidence let in by the 8th defendant will not be eschewed.

11. The learned Subordinate Judge is requested to dispose of the suit before 31.12.2024 as the suit has been pending for more than 15 years. The learned Subordinate Judge is requested to re-number the application filed by the 2nd defendant under Order IX Rule 7 as I.A.No.4 of 2024 on account of the fact that it may lead to confusion as two orders have been passed one in I.A.No.3 of 2024 dated 02.08.2024 and the



C.R.P.No.3398 of 2024

other application filed under Order IX Rule 7 in I.A.No.3 of 2024 which was allowed on 10.09.2024.

12. The Civil Revision Petition is disposed of. No costs.

Consequently, the connected miscellaneous petition is closed.

24.09.2024

dsa

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

Speaking order / Non-Speaking order



C.R.P.No.3398 of 2024

To

The Subordinate Judge,
Maduranthakam.



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C.R.P.No.3398 of 2024

V.LAKSHMINARAYANAN,J.

dsa

C.R.P.No.3398 of 2024

24.09.2024