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C.R.P.Nos.3767 & 3768 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.Nos. 3767 & 3768 of 2019

and

C.M.P.Nos.4318 of 2020 & 24754 of 2019

1.Samiyathal

2.Janaki

3.Priya

... Petitioners in both C.R.P's.

Vs.

1.Kaliammal

2.Pavayammal

3.Ponnusamy Gounder

4.Sumathi

...Respondents in both C.R.P's.

PRAYER in C.R.P.No.3767 of 2019: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 13.08.2019 passed in I.A.No.3 of 2019 in O.S.No.82 of 2014 on the file of second Additional Sub-Court, Erode.

PRAYER in C.R.P.No.3767 of 2019: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 13.08.2019 passed in I.A.No.2 of 2019 in O.S.No.82 of 2014 on the file of second Additional Sub-Court, Erode.



C.R.P.Nos.3767 & 3768 of 2017

For Petitioners in both C.R.P's.

: M/s.C.Vasudevan

For Respondent 1 & 4 in both C.R.P's.

: No appearance

For Respondent 2 in both C.R.P's.

: Died-steps due

For respondent 3 in both C.R.P's.

: M/S.V.Ragunathan

COMMON ORDER

These two Civil revision Petitions are filed challenging the orders passed by the Court below dismissing the petitions filed by the petitioners to re-open the case and to issue summons to 1st defendant, Kaliammal and her son to examine them as P.W.3 and P.W4.

2. The petitioners herein filed a suit for partition seeking allotment of 3/4th share and also for injunction restraining the 3rd defendant from encumbering the suit property. In the suit, the trial is already over and the matter is posted for arguments of the parties. At that stage, the petitioners preferred these applications to re-open the case and to issue witness summons to 1st defendant, Kaliammal and her son to examine them as P.W.3 and P.W4.

In the affidavit filed in support of these petitions, it was mentioned by the

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petitioners that they wanted to examine the said witnesses to prove the name of plaintiff's father and to prove certain facts regarding the Will dated 27.06.1969. In the affidavit, the petitioners have not given any reason for their failure to examine the witnesses earlier. The plaintiffs' side evidence was closed on 08.02.2019. The defendants 1 and 2 remained exparte. Therefore, the suit was posted for evidence of 3rd defendant and 3rd defendant was examined on 18.02.2019. Subsequently, on 29.04.2019, the defendants side evidence was closed and the matter was posted for arguments. Thereafter, the petitioners have come up with these petitions seeking re-open and to issue witness summons to 1st defendant, who remained exparte and her son. These petitions were filed by the petitioners on 11.06.2019, three months after the matter was posted for arguments. In the affidavit filed in support of these petitions, the petitioners have not mentioned any reason for the failure to examine the witnesses earlier. Further, when P.W.1 was examined, there was a suggestion to her that she was not a daughter of Karupanna gounder and the same was accepted by her. She further deposed that she was the daughter of one Chinnappa gounder. In fact, in the written statement filed by the 3rd defendant, it was clearly admitted by him that 1st plaintiff, Samiyathal was the



daughter of said Chinnappa gounder. It was also admitted by 3rd defendant that plaintiffs 2 and 3 are children of 1st plaintiff. Therefore, there is no dispute with regard to the name of the 1st plaintiff's mother and to prove the same, the proposed witnesses need not be examined. Further, one of the witnesses examined namely Kaliammal remained exparte through out. In such circumstances, the Court below rightly dismissed the petitions filed by the petitioners and I do not find any illegality or irregularity in the order passed by the Court below.

3. Accordingly, the Civil Revision Petitions stands dismissed. Consequently connected miscellaneous petitions are closed. No costs.

09.01.2024

Index : Yes / No
Internet : Yes / No
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To

The learned II Additional Sub-Judge, Erode.



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S.SOUNTHAR, J.

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