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C.R.P. (PD) .Nos.4747 & 4748 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).Nos.4747 & 4748 of 2024
and C.M.P.Nos.26541 & 26544 of 2024

1.Hakkim

2.Abuthahir

.. Petitioners
(in both cases)

Vs.

Sagira Banu

.. Respondent
(in both cases)

Common Prayer: These Civil Revision Petitions are filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal orders dated 21.09.2024 passed in I.A.Nos.5 of 2024 & 4 of 2024 in O.S.No.394 of 2013 on the file of the Principal District Munsif Court, Pollachi.

(In both cases):

For Petitioners : Mr.V.Sachin Vinayak

For Respondent : Mr.S.Parthasarathy
Senior Counsel
for Mr.S.Prabhu



COMMON ORDER

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These civil revision petitions arises against the order passed by the learned Principal District Munsif, Pollachi, in I.A.Nos.4 & 5 of 2024 in O.S.No.394 of 2013, dated 21.09.2024.

2.The civil revision petitioners are the defendants in the suit. The plaintiff presented O.S.No.394 of 2013 seeking for partition and separate possession of her 1/5th share of the property. According to her, the property originally belonged to her grandmother Aasammal. On her death, her father Ismail Ibrahim Rowther succeeded to the estate. Since Ismail Ibrahim Rowther passed away on 01.04.2013, and the defendants did not amicably resolve the issue, she came forth with the suit for partition.

3.The case of the defendants is that Late.Ismail Ibrahim Rowther had executed a gift deed in their favour on 09.03.2006. According to them, their father is entitled to dispose of the property as he pleases and had executed the document. Therefore, they wanted the suit to be dismissed on the basis of this pleadings.



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4. Issues were framed and parties proceeded for trial. P.W.1 was examined in chief on 02.01.2019. She was cross examined by the defendants' counsel on 07.02.2019. Thereafter, the plaintiff's side evidence was closed. The defendants entered the witness box and have deposed on their side too.

5. Prior to their evidence, they took out an application for letting in additional evidence and the said application was also allowed. The learned Judge allowed the petition, subject to admissibility of the documents. On their side, additional documents were marked as B6 to B13. The plaintiff has also cross examined the defendants. The matter was posted for arguments. The plaintiff has also completed their side of arguments.

6. When the matter was posted for defendants arguments, they took out an application in I.A.Nos.4 & 5 of 2024, seeking to re-open the evidence of P.W.1 and to re-call P.W.1 stating that certain valuable documents relating to the property had not been put to the plaintiff at the time of her cross examination. The learned Trial Judge received a counter from the plaintiff and dismissed the petition. Hence, these revisions.



7.I heard Mr.V.Sachin Vinayak for the civil revision petitioners and Mr.S.Parthasarathy, Senior Counsel representing Mr.S.Prabhu for the respondent.

8.Mr.V.Sachin Vinayak pleads that if one opportunity is granted to the civil revision petitioners, they will cross examine the plaintiff on the additional documents and close their evidence immediately. Mr.S.Parthasarathy argues that the evidence of the plaintiff was over in the year 2019. The defendants not only cross examined the plaintiff, but also examined the attesting witness for the settlement deed. He urges this application has been filed only for the purpose of dragging on the litigation and to harass the plaintiff.

9.I have carefully analysed the submissions made on both sides.

10.I am not enamoured with the submission of Mr.S.Parthasarathy, that the parties cannot file an application to re-open and re-call at the stage of arguments. This is because, in certain circumstances, the parties might have missed out on certain questions and they might come across this position, only when they are preparing for arguments. At that stage, if they are shut out



from cross examining the adversary, it will cause serious prejudice to the parties. Hence, a petition to re-open and re-call must be examined on the merits of the case.

11.On the facts of this case, the only reason that has been given in the affidavit is as follows:

“Now I got some value documents related to this case and also want to cross examine about the description and nature of the property and also related to this case.”

12.The said plea is neither here nor there. No reasons has been given by the defendants. In fact, there is not even a excuse of the reason given by the defendants seeking for cross examination. When absolutely no reasons given by a party for re-open and re-call, I am afraid the power under Order XVIII Rule 17 of the Code of Civil Procedure cannot be invoked. Therefore, the vehement pleas of Mr.V.Sachin Vinayak does not cut ice with me. I am constrained to confirm the orders dated 21.09.2024 passed in I.A.Nos.5 of 2024 & 4 of 2024 in O.S.No.394 of 2013 passed by the Principal District



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13.In the result, both the Civil Revision Petitions are dismissed.

Consequently, the connected Miscellaneous Petitions are closed. No costs.

28.11.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The Principal District Munsif,
Pollachi.

V.LAKSHMINARAYANAN, J.



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