



C.R.P(MD)No.738 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.02.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.738 of 2019

1.Sambu @ Palanichamy

2.Chetti @ Singaravelu : Petitioners/Defendants 5 & 6

Vs.

1.Sumathi : 1st Respondent/Plaintiff

Muthukaruppan (died)

Sundaram (died)

2.Raman

3.Vijayaraman

4.Sarasu @ Kalaiselvi

5.Kavitha

6.Muthulakshmi

7.Minor Balaji

8.Minor Rooban

9.Ponnazhagu



C.R.P(MD)No.738 of 2019

10.Vijaya @ Vijayarani : Respondents/Defendants 2, 3, 7 to 15

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 18.09.2018 in I.A.No.407 of 2018 in O.S.No.189 of 2018 on the file of the learned District Munsif cum Judicial Magistrate, Alangudi.

For Petitioner : Mr.H.Lakshmi Shankar

For Respondents : No Appearance, for R1.

: Dispensed with, R2 to R10.

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.407 of 2018 in O.S.No.189 of 2018, dated 18.09.2018 on the file of the learned District Munsif cum Judicial Magistrate, Alangudi, dismissing the petition filed under Section 151 C.P.C., to reopen the case.

2. The first respondent as plaintiff has filed the above suit for partition and for allotment of 1/7 share in the first schedule and 1/ 4 in the second schedule of suit property. The defendants 5 and 6, who are the



C.R.P(MD)No.738 of 2019

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revision petitioners herein filed written statement and are contesting the suit.

3. It is evident from the records that the sixth defendant has entered into witness box and was examined in chief as D.W.2 on 31.10.2017 and the case was posted for cross examination; that the sixth defendant has filed a petition to reopen and recall D.W.2 for further chief examination and the same was allowed and the case was pending for D.W.2 chief examination continuation; that subsequently, the case was transferred to the newly constituted Court of District Munsif cum Judicial Magistrate, Alangudi; that since the case was posted for D.W.2 examination in chief for continuation, D.W.2 has not turned up and that therefore, the trial Court has closed the evidence of D.W.2

4. The above petition has been filed seeking orders to reopen the case and to permit D.W.2 to adduce further evidence. The learned trial Judge, by observing that the case is pending for more than 10 years and despite sufficient opportunities, D.W.2 has not turned up and filed the above petition only to prolong the trial, dismissed the petition.



C.R.P(MD)No.738 of 2019

WEB COPY

5. When the matter is taken up for hearing today, the learned counsel for the petitioner would submit that very recently the plaintiff himself has filed an application to reopen his case for adducing further evidence and the same was allowed and on that basis, P.W.1 was further examined and documents came to be marked as Ex.A7 to Ex.A11 and posted to 22.02.2024 for cross examination of P.W.1.

6. The learned counsel for the petitioner would further submit that D.W.2 is in Government service and that is why, he was not in a position to attend the hearings.

7. Considering the above facts and circumstances of the case and also the fact that P.W.1 was recently recalled and the case is pending for cross examination of P.W.1, this Court is of the view that the D.W.2 has to be given one more opportunity to adduce their side evidence, but at the same time, taking note of the delay, on terms.



C.R.P(MD)No.738 of 2019

WEB COPY

8. In the result, the Civil Revision Petition will be allowed on payment of cost of Rs.2,000/- (Rupees Two Thousand only) to the plaintiff on or before 28.02.2024, failing which, the Civil Revision Petition shall stand dismissed automatically. No costs.

16.02.2024

NCC :yes/No
Index :yes/No
Internet :yes/No
das

Note : Issue order copy on **20.02.2024**.

To

- 1.The District Munsif cum Judicial Magistrate,
Alangudi.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P(MD)No.738 of 2019

K.MURALI SHANKAR,J.

DAS

Order made in
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