



C.R.P(MD).No.1875 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.11.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.1875 of 2022

and

C.M.P.(MD)No.8424 of 2022

T.R.Ganesan

... Petitioner / Plaintiff

Vs

1.Rajangam

2.Balasubramaniam

... Respondents / Respondents

Prayer : Civil Revision Petition is filed under Section 115 of Civil Procedure Code to set aside the fair and final order passed by the Sub Court, Manamadurai in I.A.No.4 of 2019 in A.S.No.142 of 2019 dated 01.04.2022.

For Petitioners : Mr.N.Tamilmani

For R1 and R2 : Mr.S.Parthasarathy

ORDER

This Civil Revision Petition is filed to set aside the fair and final order passed by the Sub Court, Manamadurai in I.A.No.4 of 2019 in A.S.No.142 of 2019 dated 01.04.2022.



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2. The facts in brief is that the suit in O.S.No.95 of 2014 was filed by this revision petitioner against the respondents herein seeking the relief of declaration and permanent injunction regarding the item No.1 and 2 of the suit properties and for partition in respect of Items 3 to 5 of the suit properties. The trial Court at the conclusion of the trial process, dismissed the suit without any cost. Against which, this revision petitioner has preferred an appeal in A.S.No.142 of 2019 before the Sub Court, Maanamadurai. Pending appeal proceedings, a petition under Order 41 Rule 27 under Section 151 of C.P.C., was filed by the petitioner herein seeking permission of the appellate Court to produce additional evidence in the form of documents annexed with the petition. That application was resisted by the respondent by filing counter. The appellate Court took up that petition independent of the appeal and dismissed the petition stating that no proper reason was assigned for the delay and no additional evidence is required for arriving at a just decision. Against the order of the appellate Court, this Civil Revision Petition is preferred.



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3. The appellate Court has committed a procedural irregularity. It is a settled procedure of law that petition filed under Order 41 Rule 27 of CPC must be taken and heard along with the appeal. Only on the event, the appellate Court can record a finding whether the additional evidence now proposed to be let in, will be required for just decision in this case. Taking the application independently is not permitted.

4. On the sole ground, without going into the other aspects and the pleadings of the parties, this Civil Revision Petition is allowed and the order passed by the learned Subordinate Judge, Manamadurai, in I.A.No. 4 of 2019, is set aside. The matter is remanded back to the file of learned Subordinate Judge, Manamadurai, with a direction to take up this petition along with the main appeal. No costs. Consequently, connected miscellaneous petition stands closed.

11.11.2024

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No

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G.ILANGO VAN, J.

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To

- 1.The Subordinate Judge, Manamadurai.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

ORDER
IN
C.R.P(MD)No.1875 of 2022
and
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