



C.R.P.PD(MD)No.402 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.PD(MD).No.402 of 2021

&

C.M.P(MD).No.2167 of 2021

A.Muthusamy

... Petitioner

Vs.

1.Azhagirisamy

2.Duraisamy

3.Nagarajan

4.Kalimuthu

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records relating to the impugned fair and decreetal order dated 13.08.2019 and made in I.A.No.210 of 2017 in O.S.No.202 of 2009 on the file of District Munsif Court, Periyakulam and set aside the same.

For Petitioner : Mr.V.Janakiramulu

For Respondents : No appearance for R4



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ORDER

This matter earlier came up for consideration on 15.03.2024 and this Court heard the learned counsel for the petitioner. As there was no representation for the respondents the matter was adjourned to today. Today also there is no representation for the respondents. Hence, this court is left with no other option except to decide the matter on merits.

2. This Civil Revision Petition is directed against an order dated 13.08.2019 in I.A.No. 210 of 2017 in O.S.NO.202 of 2009 passed by the learned District Munsif, Periyakulam. The said application was filed under Order 16 Rule 1 r/w section 151 of C.P.C to condone the delay in filing list of witnesses by the petitioner/plaintiff. The said suit was filed seeking partition of the suit schedule properties between the brothers. The settlement deeds said to have been executed by the father of the petitioner herein were marked as exhibits through the plaintiff during his cross examination as Exs.B1 to B7. At that stage, the petitioner realised the necessity of examining certain witnesses, filed as list of witnesses along with the petition to condone the delay in filing the list of witnesses.



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3. The said application came to be dismissed by passing the order under revision by the learned trial court on the ground that the said Exs. B1 to B7 are the documents marked by the defendants and it is for them to prove such documents. According to the learned counsel for the petitioner, it is necessary for the petitioner to examine certain witnesses connected with the documents that are marked as Exs.B1 to B7 to disprove such documents by adducing appropriate evidence. It is not in dispute, that at the relevant point of time when the application in question was filed is at the stage of plaintiffs evidence. Therefore, the petitioner/plaintiff will always have the option of examining witnesses on his side. Non-filing of list of witnesses will not permanently debar the petitioner from adducing evidence on his side. Provision under Order 16 Rule 26 provides such provision and the same cannot be put against the petitioner to deprive him to adduce evidence of his choice. The plaintiff is the master of his suit and it is for the plaintiff to decide to whom to examine as his witnesses. Merely on the ground of non filing of list of witnesses, he cannot be disentitled from adducing evidence.

4. Unfortunately, the learned trial court, in spite of filing an



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application under Order 16 Rule 1, instead of allowing the said application, disallowed the same on the ground that documents marked as Exs.B1 to B7 are required to be proved by the defendants in the suit which is totally an erroneous approach on the part of the trial court. Even assuming that the said documents are required to be proved by the defendants, the right of the petitioner to adduce evidence on his behalf of his choice cannot be deprived.

5. In the circumstances, the order under revision is totally unjustified and accordingly the same is set aside. Consequently, I.A.No.210 of 2017 is allowed and the list of witnesses filed by the petitioner shall be taken on record and he shall be afforded an opportunity to adduce evidence of his choice in accordance with law. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, Civil Miscellaneous Petition is closed.

20.03.2024.

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

The District Munsif Court, Periyakulam



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MUMMINENI SUDHEER KUMAR, J.

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20.03.2024