



C.R.P.(MD)Nos.2171 & 2172 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 19.09.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)Nos.2171 & 2172 of 2024

and

C.M.P.(MD)Nos.12312 of 2024

A.Anthony Sebastian Juliet

... Petitioner / Petitioner / Appellant

in both C.R.Ps.

Vs.

1.Mariya Vimala Rani

2.Micheal Ernest Jero

... Respondents / Respondents / Respondents

in both C.R.Ps.

Prayer in C.R.P.(MD)No.2171 of 2024: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and decreetal order dated 01.07.2024 passed in I.A.No.4 of 2023 in A.S.No. 36 of 2023 on the file of the learned Principal District Judge, Tirunelveli District and allow this civil revision.

Prayer in C.R.P.(MD)No.2172 of 2024: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and decreetal order dated 01.07.2024 passed in I.A.No.5 of 2023 in A.S.No. 36 of 2023 on the file of the learned Principal District Judge, Tirunelveli District and allow this civil revision.



C.R.P.(MD)Nos.2171 & 2172 of 2024

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For Petitioner : Mr.S.Dhanapal

For Respondents : Mr.V.Meenakshisundaram
(in both C.R.Ps) for Mr.D.Nallathambi

COMMON ORDER

Heard both sides.

2. The 5th defendant in O.S.No.176 of 2013 on the file of the Sub Court, Valliyoor is the revision petitioner herein. The fifth defendant's sister and nephew filed the said suit seeking declaration that the release deed dated 02.06.2004 (Document No.682 of 2004 on the file of the SRO, Valliyoor) is null and void and that it does not bind the first plaintiff and for permanent injunction and for partition of the first plaintiff's half share in the suit property and for other reliefs. The suit was decreed on 30.06.2022. Aggrieved by the same, the fifth defendant filed A.S.No.36 of 2023 before the Principal District Judge, Tirunelveli. One of the points taken in the plaint was that the release deed is a piece of forgery. According to the appellant / D5, the first plaintiff had also executed sale deeds in which she had affixed her thumb impression. The appellant in A.S.No.36 of 2023 therefore wanted to send for those sale deeds for the purpose of comparing the thumb impression found in the suit release deed with the thumb impression found in the admitted sale deeds executed by the first plaintiff. The appellant / D5 had filed I.A.Nos.4 & 5 of



C.R.P.(MD)Nos.2171 & 2172 of 2024

2023 only for the purpose of adducing additional evidence under Order 41 Rule 27 of C.P.C in the appeal. The said IA was dismissed vide order dated 01.07.2024. Questioning the same, these civil revision petitions came to be filed.

3. It is well settled that the first appellate court will consider an application for reception of additional evidence only at the time of final hearing of the appeal itself. If a case for reception of the additional evidence is made out, final hearing will be deferred and IA under Order 41 Rule 27 of C.P.C will be allowed. In any event, call will be taken on this question only when the appeal itself is taken up for final disposal and not before that. The first appellate court dismissed IAs filed by the appellant even before taking up the first appeal for final disposal. It is a procedural lapse. On this ground, the impugned orders are set aside. The first appellate court will consider I.A.Nos. 4 & 5 of 2023 while taking up A.S.No.36 of 2023 for final disposal. I make it clear that all the contentions of both the parties are left open.

4. The Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petition is closed.

19.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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C.R.P.(MD)Nos.2171 & 2172 of 2024

G.R.SWAMINATHAN, J.

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To:

The Principal District Judge, Tirunelveli District.

C.R.P.(MD)Nos.2171 & 2172 of 2024

19.09.2024