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CRP.No.3482 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2025

CORAM:

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

CRP.No.3482 of 2022 &
CMP.No.18538 of 2022

N. Mohana

... Petitioner

Vs.

Tmt. Parameshwari (died)
1. E. Padmavathi

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to call for the records in I.A.No.5 of 2022 in A.S.No.4 of 2020 in order dated 08.09.2022 passed by the III Additional District and Sessions Judge, Erode at Gobichettipalayam and set aside the same.

For Petitioner : Mr. G. Pavendhan

For Respondents : Mr.M. Roshan Atiq for R1
(Caveator)

ORDER

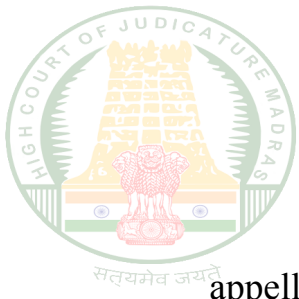
Page 1 of 6



CRP.No.3482 of 2022

WEB COPY The Revision Petitioner is the appellant in the suit in A.S.No.4 of 2020 and she was originally arrayed as a defendant in the suit in O.S.No.168 of 2013. The suit was filed for the relief of declaration with regard to A schedule property and for consequential relief of permanent injunction. The said suit in O.S.No.168 of 2013 was decreed in favour of plaintiff and challenging the same, the defendant had filed an appeal in A.S.No.4 of 2020. Pending appeal suit, the present I.A.No.5 of 2022 was filed to frame additional issues under Order XLI, Rule 25 r/w. Order XIV Rule 5 and section 151 CPC. The main prayer in the present interlocutory application is to frame additional issues and to remand the case to trial court for adducing additional evidence in respect of additional issues.

2. The First Appellate Court taking into consideration that the written statement was filed by the defendant and the defendant had not denied the claim which is now made before the First Appellate Court and taking note of the fact that the written Partition List dated 16.11.1990 and the execution of Partition Deed dated 25.01.1993 and the contents therein, were clearly admitted in the written statement filed by the appellant and the



CRP.No.3482 of 2022

WEB COPY

appellant had not denied anything before the trial court, held there is no necessity to frame the additional issues. The First Appellate court has also rejected the decisions relied upon by the defendant in her written statement **(i) 2022-3-SCC 757 in the case of Inre K.Arumuga Velaiah and (ii) 1976-2-MLJ** in the case of **[Inre Pattusami Padayachi]** holding that the above citations are not applicable to the facts of the present case, thereby, I.A.No.5 of 2022 was dismissed. Challenging the same, the present Civil Revision Petition is filed.

3. Heard Mr.G. Pavendhan, learned counsel appearing for the petitioner and Mr.M.Roshan Atiq, learned counsel for the 1st respondent and perused the materials available on record.

4. Admittedly, when ample time was available for the defendant, the defendant had not chosen to file any petition for framing of additional issues before the trial court. After the pronouncement of judgment by the trial court in O.S.No.768 of 2013, in which, the defendant had lost her case, she had preferred this appeal in A.S.No.4 of 2020, wherein, she had filed



CRP.No.3482 of 2022

WEB COPY

the present application seeking to frame additional issues. After considering the written statement filed by the defendant and the judgment of trial court, the first appellate court has come to the conclusion that there is no necessity to frame additional issues mentioned in the application. It is to be noted that sufficient time has been given to the defendant before the Trial Court and the defendant has also filed written statement with categorical admission. The defendant failed to seek framing of additional issues before the trial court. Taking note of the above facts, the first appellate court has rightly dismissed the application. The petitioner had now chosen to file the present Civil Revision Petition just to fill up the lacuna.

5. In such view of the matter, this court finds that the order passed by the First Appellate Court in I.A.No.5 of 2022 in A.S.No. 4 of 2020, dated 08.09.2022 needs no interference. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.



CRP.No.3482 of 2022

21.03.2025

WEB COPY

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
msr

To

The III Additional District and Sessions Judge,
Erode, Gobichettipalayam.

N. SENTHILKUMAR, J.

msr



WEB COPY



CRP.No.3482 of 2022

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