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CRP(PD).No.5400 & 5401 of 2024.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

CRP.(PD).Nos.5400 & 5401 of 2024
and
CMP.No.30095 of 2024

1. Ananthi
2. Sagadevan
3. Sathish

... Petitioner in both CRPs

Vs.

Aravind Joothi Prakash

... Respondent in both CRPs

Prayer in CRP.No. 5400 of 2024:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 26.11.2024 made in IA No.2 of 2024 in OS No.1 of 2018 on the file of the Court of the II Additional District Judge, Tindivanam, by allowing this CRP.

Prayer in CRP.No.5401 of 2024:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 26.11.2024 made in IA No.3 of 2024 in OS No.1 of 2018 on the file of the Court of the II Additional District Judge, Tindivanam, by allowing this CRP.



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CRP(PD).No.5400 & 5401 of 2024,



For Petitioner : M/s.R.Agilesh, in both CRPs

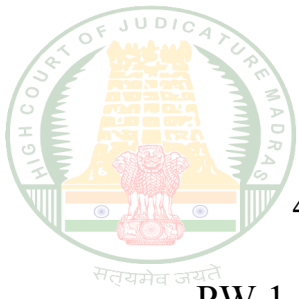
For Respondent : M/s.S.Giritharan in both CRPs

COMMON ORDER

The above Civil Revision Petitions are filed challenging the common order dated 26.11.2024 passed in IA.Nos. 2 and 3 of 2024 in OS.No.1 of 2018, on the file of the II Additional District Judge, Tindivanam.

2. The facts are briefly set out herein below:-

3. The respondent herein had filed the suit OS.No.1 2018 on the file of the II Additional District Judge, Tindivanam seeking recovery of the possession, mesne profits and for permanent injunction. The suit was filed in the year 2017. The petitioners herein had filed their written statement in the year 2018. After the recording of evidence had been completed and when the matter was posted for the arguments of the defendants, the defendants/petitioners have come forward with the aforesaid applications.



4. I.A No.2 of 2024 has been filed to reopen the evidence of PW.1 and DW.1 and I.A No.3 has been filed to recall P.W.1 and D.W.1 for further examination.

5. In the affidavit filed in support of the said applications, the petitioners/defendants would submit that the 1st petitioner's husband had filed a suit against one Aravind Jyoti Basu in OS No.156 of 2013, for declaration of title and permanent injunction which was transferred to the Additional District Court, Tindivanam and renumbered as OS.No.25 of 2021. The respondent/plaintiff had also filed a suit OS.No.101/2012 to declare that he is the legal heir of the deceased Saraswathi Ammal in which an exparte decree had been passed. The petitioner had filed a suit O.S.No.7 of 2018 on the file of the District Munsif, Vanur to set aside the same as null and void and to declare them as legal heirs of Machakedhu, who is the legal heir of the deceased Saraswathi Ammal. This suit was also transferred to the file of the II Additional District Judge, Tindivanam and renumbered as OS.No.29 of 2021.



6. The respondent/plaintiff had contended that the petitioners/defendants had failed to prove that Machakedhu is the adopted son of Saraswathi Ammal. Since Machakedhu's parents were not alive, they could not be examined. Further, the petitioners had omitted to examine any witness to prove Machakedhu's adoption. Therefore, in order to prove their case, it becomes necessary to reopen the evidence of P.W.1 and D.W.1 and to recall P.W.1 and D.W.1.

7. The respondent/plaintiff had filed a counter to these applications by contending that it is nothing but an attempt to delay the disposal of the suit since the petitioners are in illegal occupation and enjoyment of the suit property. The respondent/plaintiff would further submit that the PW1 was examined for over 4 days and the petitioners are aware that PW1 is working abroad and will not be in a position to come down to India in near future, despite which the petition has been filed. That apart, the petitioners are trying to fill up the lacuna as they had not taken steps to prove that Machakedhu was the adopted son of Saraswathi Ammal. Further, the petition also does not give details of the additional witnesses whom the petitioners



intend to summon.

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8. After hearing both sides, the learned II Additional District Judge, Tindivanam proceeded to dismiss the said IAs on the ground that the applications are only an attempt to fill up the lacuna in the evidence of DW1 by recalling and re-examining witnesses. Such an attempt would cause great prejudice to the respondent/plaintiff. The Court had also observed that no details whatsoever about the witnesses have been given which clearly shows that the applications are nothing but an afterthought and a delaying tactics. Aggrieved by the same, the petitioners are before this court.

9. Heard the counsels on either side and perused the records.

10. Mr.R.Agilesh, learned counsel appearing on behalf of the petitioners would submit that the petitioners have to mark two death certificates to substantiate their contentions. When this Court asked the counsel for the respondent, if they would have any objection to marking these documents, they would submit that they have no



objection to the two death certificates being marked by consent.

However, in the affidavit filed in support of the above interlocutory applications, the details of the death certificates have not been given. On the contrary, the petitioners would submit that only in the course of the argument, the respondent had contended that the petitioners have not proved that Machakedhu, the husband of the 1st respondent and the father of respondents 2 and 3 was the adopted son of Saraswathi Ammal. As Machakedhu is no more, and his parents, who gave him in adoption, are also no more, the petitioners are unable to provide any evidence to prove the adoption. They would further submit that to prove these facts they have not examined witnesses. Therefore, since the arguments have been made, it becomes necessary for the petitioners to prove the same. Hence, they have filed the above applications.

11. The affidavits filed in support of the above interlocutory applications are devoid of details about the witnesses, other than P.W.1 and D.W.1, whom the petitioners seek to examine. Further, the necessity to re-examine PW1 and DW1 has not been clearly spelt out.



The above applications appear to be only an attempt to delay the proceedings and also to fill up the lacuna as a specific plea has been taken by the plaintiff that the defendants have not proved the adoption of Machakedhu. Therefore, the Trial Court has rightly dismissed the interlocutory applications and I see no reason to interfere with the same.

12. Accordingly, the Civil Revision Petitions stand dismissed. However, since the respondent has no objection to the death certificates being marked, direction is issued to the learned II Additional District Judge, Tindivanam to mark the death certificates produced by the petitioners (on consent). No costs. Consequently, the connected Miscellaneous Petition is closed.

03.02.2025

(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

To

1.The II Additional District Judge, Tindivanam,



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P.T. ASHA. J.,

(shr)

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