

IN THE COURT OF THE DISTRICT MUNSIF, SULURPresent : **Tmt.N.Renuga., B.A., B.L.,**

District Munsif, Sulur

Saturday the 2nd day of September 2023**IA.12/2023****in****O.S.No. 334/2017**

1. Subramaniam

2. Dharmaraj

...Petitioners/Defendants

/VS/

1. Mandiriappan

2. Nachimuthu

3. Thangavelsamy

...Respondents/Plaintiffs

This petition is coming on 22.08.2023 for final hearing before me in the presence of Thiru.K.A.Palanisamy, Advocate for the Petitioners and M/s.Krishnaveni, Advocate for the Respondents and upon perusing the records, and this court made the following:

ORDERS:

This petition filed under section 151 of CPC to reopen the above suit for producing the CRP Number within two days.

1. The brief averments of the affidavit filed by the petitioners as follows:

1.1. The petitioners/defendants have filed a petition under order XVI R 1 r/w 151 of CPC before this court, the same was numbered as IA.No.7/23. On 12.06.2023 this court was dismissed the IA.No.7/23. Thereafter the petitioners/defendants have preferred a Civil Revision petition before the Hon'ble High court of Judicature, Chennai against the order of IA.No.7/23. The Hon'ble High court of Judicature, Chennai was numbered under S.R.No.92403/2023.

1.2. On 18.07.2023 the petitioners have received the communication from the Advocate of Hon'ble High Court, Chennai through a message stated that CRP.No.92403/2023 at about 12.20 p.m.

1.3. The petitioners sent a message to Chennai High court Advocate to

confirmed the CRP.No.92403/2023. But the High court of Advocate, Chennai said that the number given by his is only SR.No., not CRP.No. Due to oversight the communication given by the Junior Advocate, Chennai it is not wanton or willful.

1.4. The CRP section officer on leave for the past 7 days, due to that CRP bundles have not taken for numbering in the Hon'ble High Court of Judicature, Chennai. The senior Advocate informed the above fact on 18.08.2023 only. The CRP petition yet to be numbered within two days. While being so, this Hon'ble Court closed the DW's evidence on (last week) 14.08.2023 and posted for arguments. The petitioners have good valid defence in the above suit, and also having right to file CRP petition against the order of this court before Hon'ble High Court of Judicature, Chennai within the stipulated period. In the above said circumstances, this Hon'ble court heard arguments without examine the defense side, the petitioners will be put to irreparable loss and hardship and can not be compensated in anyway. Hence, this petition.

2. The brief averments of Counter filed by the Respondent as follows:

2.1. The petition is not maintainable both in law and on facts. The petitioners have not produced any affidavit of the alleged Junior Advocate, Chennai to substantiate their claim. There are several court officers in the Hon'ble High Court. If a court officer went on leave, definitely there will be another court officer to peruse the petitions for numbering and for other process. If, there is any delay on the part of teh court officer, the petitioners ought to have intimated the same to the Registrar General. Without doing so, the petitioners cannot blame upon the alleged court officer who was on alleged leave for the past one week.

2.2. Now, the case is posted for arguments. The suit was posted for examination of defendants' side evidence right from February 2023. Since the petitioners were not able to produce the number of the C.R.P., this Hon'ble court was pleased to close the defendants' side evidence.

2.3. The petitioners ought to have filed an application to reopen their case for examination of their side witness. But they have chosen to file an application to

reopen their case for filing the number of C.R.P. that too within two days. The petitioners are getting adjournments right from 25.01.2023 without any conscience. The suit is filed in the year 2001. The petitioners have no intention to conduct the trial of the case. C.R.P. number can be furnished till the disposal of the suit. Hence, no necessity will arise to reopen the case of the defendants.

2.4. The petition is highly belated and motivated one. The petitioners have not approached this Hon'ble court with clean hands. Hence, the petition ought to be dismissed with throughout costs under section 35A of CPC.

3. Point for consideration:-

Whether the petition under section 151 of CPC is to be allowed?

4. Points:-

4.1. Heard the counsels for both the parties. On perusal of records the main suit is filed for partition and other reliefs. The suit is now pending in the stage of argument. The suit filed for the relief of partition by one Mandiriappan and Natchimuthu who is initially purchased the suit property under the sale deed dated 08.10.2001 and they are having 2/ 3rd share in the suit property. Subsequently, the 3rd plaintiff has purchased the suit property from the 1st and 2nd plaintiffs and he impleaded as party to the case. The defendants in his written statement has pleaded that the 1st and 2nd plaintiffs Mandiriappan son of Kumarasamy and Natchimuthu son of Arumugasamy are purchased the suit property from one Muthugounder son of Karuppasamy and Arunachala gounder son of Mandiriappa gounder on 08.10.2001. Originally the Muthugounder and Arunachala gounder are not sons of Karuppasamy gounder and Mandiriappa gounder as mentioned in the document they are the sons of one Chellappa gounder. They fraudulently impersonated their father name and executed the sale deed in favour of 1st and 2nd plaintiffs.

4.2. Further, the persons who sold the suit property to the plaintiffs Muthugounder, Arunachala gounder are not the real owners of the suit property. Hence, the defendant as petitioners filed IA.No.7/2023 ordered to produce voter list in the year 2012 the Block Development Officer, Sultanpet Panchayath Union. For

the name list of Karuppasamy son of Chellappa gounder, Thirumathaal wife of Karuppasamy, Mandiriappa gounder son of Chellappa gounder, Ramathaal wife of Mandiriappa gounder, Velathaal wife of Kandasamy. Further the petitioners requested to produce the Tahsildar, Civil Supplies, Sultanpet the Smart card and Aadhaar card of the above said persons. In addition to that, the petitioners has requested the Head Quarters Tahsildar to produce Adangal from the year 1903 to 2000 in respect of S.F.No.59/1 Senjeriputhur village, Sulur Taluk.

4.3. The same has been dismissed on 12.06.2023 and the case is posted for defendants side evidence and this court on sufficient opportunity given to defendant has closed the defendant side evidence suomoto. Against the same the defendant has preferred revision before the Hon'ble High Court, Madras and the SR.No. Is 92403/2023. Further on 25.08.2023 the defendant filed memo stating that the CRP has been numbered in 3130/2023 and the CNR.No is HCMA01-128770-2023. Hence, considering the situation this court intent to reopen the case for defendants side evidence.

In the result, this petition is allowed. No cost.

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 2nd day of September 2023.

District Munsif,
Sulur.

List of witnesses and documents on Petitioners side:-

Nil

List of witnesses and documents on Respondents side:-

Nil

District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.12/2023 in
O.S.No.334/2017
Dated : 02.09.2023
DMC, Sulur