

Elango Vs. Jayaprakash and Others

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Court : Chennai

Decided On : Mar-13-2017

Judge : M. Duraiswamy

Appeal No. : C.R.P.(PD).No. 897 of 2017 & C.M.P. No. 4419 of 2017

Appellant : Elango

Respondent : Jayaprakash and Others

Judgement :

(Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 01.12.2016 made in I.A.No.240 of 2016 in O.S.No.179 of 2004 on the file of the Additional District Court, Namakkal.)

1. Challenging the order passed in I.A.No.240 of 2016 in O.S.No.179 of 2004 on the file of the Additional District Court, Namakkal, the plaintiff has filed the above Civil Revision Petition.
2. The plaintiff filed the suit in O.S.No.179 of 2004 for partition and for other reliefs.
3. The defendants filed their written statement and are contesting the suit.
4. After the commencement of trial, the plaintiff took out an application in I.A.No.240 of 2016 to recall D.W.1 for further cross examination. In the affidavit filed in support of the petition, the plaintiff has stated that based on the evidence of

D.W.2, certain questions have to be put to D.W.1 by way of further cross examination. In these circumstances, the plaintiff sought for recalling D.W.1 for further cross examination with regard to the statements made by the witness (i.e.) D.W.2 in his evidence. The application filed by the plaintiff was contested by the defendants and the trial Court, taking into consideration the case of both parties, dismissed the petition.

5. It is not in dispute that D.W.1 was cross examined by the plaintiff and after the examination of D.W.2 and at the fag end of the trial, the plaintiff has filed the present application seeking for further cross examination of D.W.1 on the statements made by D.W.2 in his evidence. We can understand if the plaintiff filed an application to cross examination D.W.1 with regard to the statements made by him in his chief examination. The statements made by D.W.2 cannot give a cause of action for filing the present application for further cross examining D.W.1. The reasoning given by the plaintiff for further cross examining D.W.1 based on the evidence of D.W.2 cannot be accepted, which was rightly rejected by the trial Court. In the counter filed by the defendants, they have stated that the oral evidence was closed on 07.09.2016 and the suit is posted for arguments. The suit was filed in the year 2003 and the same is kept pending for more than 13 years, at the fag end of the trial, the present application has been filed by the plaintiff seeking for further cross examining D.W.1 on a ground which cannot be accepted and which was also rightly rejected by the trial Court.

6. In these circumstances, I do not find any error or irregularity in the order passed by the trial Court. The Civil Revision Petition is devoid of merits and the same is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed.

7. Since the suit is pending from 2003, I direct the Additional District Court, Namakkal, to dispose of the suit in O.S.No.179 of 2004, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.