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C.R.P.(MD)No.2186 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.2186 of 2022
and
C.M.P.(MD)No.10180 of 2022

V.Nirmala

.. Petitioner

Versus

1.P.Kanmani
2.V.Vairamani
3.D.Thangamani
4.B.Malini
5.R.Thilagavathi
6.R.Lakshmikanthan
7.R.Pooja Shri

.. Respondents

Prayer :- Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 10.08.2022 passed in I.A.No.1 of 2022 in O.S.No.471 of 2015, on the file of the Principal Sub Court, Karur.

For Petitioner : Mr.K.Hemakarhikeyan

For R1 to R4 : No Appearance

For R5 to R7 : Mr.R.Mathiyalagan

ORDER

The petitioner is aggrieved by the impugned fair and decreetal order dated 10.08.2022 passed in I.A.No.1 of 2022 in O.S.No.471 of 2015, on the file of the Principal Sub Court, Karur.



2.The learned counsel for the petitioner submits that the petitioner is the plaintiff in O.S.No.471 of 2015 before the Principal Sub Court, Karur. The said suit has been filed by the petitioner against her sisters [respondents 1 to 4 herein] and her sister-in-law and her two children, who have been arrayed as respondents 5 to 7 herein/defendants 5 to 7.

3.In the above suit, respondents 5 to 7 have filed their written statement and additional written statement together with counter claim. In the written statement, it has been stated that the petitioner's father and mother have executed two separate unregistered Wills, dated 31.07.1996 and 23.07.1998 in favour of their deceased son Rajamani, husband of the fifth respondent/fifth defendant and father of the respondents 6 and 7/defendants 6 and 7.

4.It is the case of the petitioner that the first schedule of property belonged to her father and the second schedule of property belonged to her mother, which was admitted by the respondents 5 to 7/defendants 5 to 7. Further, the respondents 5 to 7/defendants 5 to 7 had claimed title through the aforesaid unregistered Wills and therefore, the respondents/defendants have to begin examination of witnesses as first as per Order XVIII Rule 1 of C.P.C., so that the petitioner can cross-examine them. Hence, the petitioner filed I.A.No.1 of 2022 in O.S.No.471 of 2015 before the Principal Sub Court, Karur.



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5.By the impugned fair and decreetal order dated 10.08.2022, the learned Principal Sub Judge, Karur, has dismissed the application filed by the petitioner with the following observations:-

"7.மனுதாரர் தாக்கல் செய்துள்ள உரிமையியல் விசாரணை முறைச்சட்டம் கட்டளை 18 விதி 1ல் பின்வருமாறு கண்டுள்ளது.

ORDER XVIII

HEARING OF THE SUIT AND EXAMINATION OF WITNESSES

1.Right to begin.- The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

என்று தெரிவித்துள்ளது. மேற்படி சட்டப்பிரிவின் அறிந்தமைகளிலிருந்து வழக்கு தாக்கல் செய்துள்ள வாதியே பொதுவாக விசாரணையை தொடங்கவேண்டும். மாறாக வாதி வழக்குரையில் கூறியுள்ள சங்கதியை பிரதிவாதி ஒப்புக்கொண்டு சட்டத்தின் அடிப்படையில் வாதி கோரியுள்ள பரிகாரம் அவருக்கு கிடைக்கத்தக்கதல்ல என்று தெரிவித்தால் பிரதிவாதி வழக்கை தொடங்கலாம் என்று உள்ளது. நம்முன் உள்ள இந்த வழக்கிலோ வாதியின் வழக்குரையில் உள்ள சங்கதிகளை 5 முதல் 7 பிரதிவாதிகள் முற்றிலும் மறுத்து எதிர்வழக்குரை தாக்கல் செய்திருக்கிறார். மேலும் உயில் சாசணங்களின் அடிப்படையில் தாவாச் சொத்தில் உரிமை பாராட்டுகிறார். மேற்படி காரணத்திற்காக மேற்படி சட்டப்பிரிவின்படி வழக்கை தொடங்கும்படி 5 முதல் 7 பிரதிவாதிகளுக்கு உத்திரவிடமுடியாது. மேலும் 5 முதல் 7 பிரதிவாதிகள் வழக்கை முதலில் தொடங்குவதற்கு தங்களுக்கு அனுமதி வேண்டுமென்று இம்மனுவை தாக்கல் செய்திருக்கவில்லை. மாறாக இந்த வழக்கை நிரூபிக்கும் சமையை கொண்டுள்ள வாதி அவரது வழக்கை நிரூபிக்காமல் 5 முதல் 7 பிரதிவாதிகள் வழக்கை நிரூபிக்கவேண்டும்



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என்று இம்மனுவை தாக்கல் செய்திருப்பது மேற்படி சட்டப்பிரிவின்படி முற்றிலும் நிலைநிற்கத்தக்கதாக இல்லை என்று மேற்காண் அறிந்தமைகளின் விளைவிற்கு இந்நீதிமன்றம் முடிவு காண்கிறது. ஆகவே மனுதாரர் மனுவை தள்ளுபடி செய்வதே மேற்காண் ஒட்டுமொத்த அறிந்தமைகளின் விளைவிற்கு சட்டபடி உகந்ததாக இருக்குமென்று இந்நீதிமன்றம் முடிவு காண்கிறது."

6.In support of his contentions, the learned counsel for the petitioner has relied on the following judgments of this Court:-

(i) **V.Palanisamy vs. V.Shanmugam and others [2012 (3) CTC 6 : 2012 (1) LW 467]**, wherein it has been held as follows:-

"10. It must be noted that the present case is a case of partition. In normal circumstances there will be very little difference of opinion between the partners. But, when a defendant seeks to purport a property in question on the basis of a family arrangement which was specifically acted upon, then it is for him to prove such a family arrangement before the Court so as to exclude those properties from the common pool. The plaintiff cannot be expected to prove the negative, as it was a matter not covered by any documentary evidence and based upon an oral arrangement followed by conduct of the parties.

11. Considering that it was a partition suit, the endeavor of the Court will be to assign proper share to all the sharers. The Court below had not committed any irregularity. It must also be noted at any time, the Court can ask parties to let in evidence and the power of the Court in that context was not taken away as held by the Supreme Court in Salem Advocate Bar Assn. v. Union of India reported in (2005) 6 SCC 344. In paragraph 32 it was observed as follows:

32.Order 18 Rule 2(4) which was inserted by Act 104 of 1976 has been omitted by Act 46 of 1999. Under the said rule, the court could direct or permit any party, to examine any party or any witness at any stage. The effect of deletion is the restoration of the status quo ante. This means that law that was prevalent prior to the 1976 amendment, would govern. The principles as noticed hereinbefore in regard to deletion of Order 18 Rule 17(a) would apply to the deletion



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of this provision as well. Even prior to the insertion of Order 18 Rule 2(4), such a permission could be granted by the court in its discretion. The provision was inserted in 1976 by way of caution. The omission of Order 18 Rule 2(4) by the 1999 amendment does not take away the court's inherent power to call for any witness at any stage either suo motu or on the prayer of a party invoking the inherent powers of the court."

(ii) Krishnakumar and others vs. V.Seethalakshmi and two others [C.R.P.

(PD)No.28 of 2013, decided on 07.01.2013], wherein it has been held as follows:-

"7. The case of the defendants is that, Narayana Asari did not die intestate and he executed a Will in favour of his son Subramaniam, viz., the father of the defendants. Therefore, as per the provisions of Order 18, Rule 1 of C.P.C., both the parties, viz., the plaintiffs and the defendants admitted the fact that the properties belonged to Narayana Asari and this fact has to be taken into consideration and the other denial, regarding the succession to the property cannot be taken into consideration to decide whether the defendants are admitting the case of the plaintiffs are not. If the arguments of the learned counsel for the revision petitioners is to be accepted, for attracting the provisions of Order 18, Rule 1, that the defendants ought to have admitted the facts, alleged in the plaint, then, there is no need for any trial and the Court can straightway pass a decree. What the order requires is, whether the defendants admitted the basis of the claim of the plaintiffs. In this case, the basis of the claim of the plaintiffs is that the property belonged to Narayana Asari. That fact admitted by the defendants. If the defendants claimed that the property did not belong to Narayana Asari or Narayana Asari has no absolute estate over the property, in that case, it cannot be stated that the defendants have admitted the case of the plaintiffs. Therefore, having admitted the fact that the property belongs to Narayana Asari, the first condition, as stated in Order 18, Rule 1 has been satisfied and when the defendants pleaded right over the property, under the Will, they will have to prove the Will. Therefore, the Court below has rightly directed the defendants to lead evidence, in the first instance. In the judgment rendered in [Bajaj Auto Ltd., Vs. TVS Motor Company Ltd., referred to supra, it has been held by the Hon'ble Division Bench of this Court in para No.34, which reads thus:-

"Burden of proof vis-a-vis onus of proof:-

Burden of proof generally lies on a party, who asserts a particular fact. In other words, it would be on a party,



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whose suit would fail, if no evidence was let in. onus of proof by a party would cease the moment opposite party admits the transaction. Burden of proof on the pleadings of a party, never shifts to the other party. The initial burden of proving a particular fact is always on the party who asserts it. When he produces evidence in support of his statement, onus would shift on the opposite party to adduce rebutting evidence to meet the case made out by the other party. In civil cases, onus of proof is never fixed permanently, but it would fluctuate very frequently. "

8. In this case too, the burden of proof lies on the party, who asserts a particular fact. The particular fact, which is asserted is, whether the property belonged to Narayana Asari absolutely. That fact has been asserted by the plaintiffs and also admitted by the defendants. Therefore, there is no burden of proof on the plaintiffs to prove that fact. Insofar as the onus of proof is concerned, it is held in that judgment, referred to above, that onus of proof by a party would cease, the moment, the opposite party admits the transaction. In this case, the onus of proof is on the defendants to prove the execution of the Will, that has been denied by the plaintiffs. Once defendants are able to prove the Will to the satisfaction of the court, the suit filed by the plaintiffs will be dismissed and there is no necessity to go into the further aspects of the matter, by letting evidence by the plaintiffs. Considering all these aspects, the Court below initially directed the defendants to lead evidence first and that was properly appreciated, while considering the Review Application. Further, I do not find any infirmity in the order passed by the Court below in the Review Application and there is no error apparent on the face of record to interfere with the same."

7.The learned counsel for the respondents 5 to 7 submits that the impugned order is well reasoned and requires no interference and therefore, he prayed for dismissal of the Civil Revision Petition.

8.A reading of Order XVIII Rule 1 of C.P.C. indicates that the plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and



contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

9.In my view, there is no admission in the written statement filed by the respondents 5 to 7/defendants 5 to 7 for invocation of Order XVIII Rule 1 of C.P.C. The petitioner/plaintiff is the author of the dispute and therefore, she has right to begin unless the specific requirements of Order XVIII Rule 1 of C.P.C. are satisfied.

10.In this case, the requirements are not satisfied. Therefore, the application filed by the petitioner has been rightly rejected by the learned Principal Sub Judge, Karur. In my view, the order passed by the learned Principal Sub Judge, Karur, does not call for any interference. Hence, the present Civil Revision Petition is liable to be dismissed. Accordingly, it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

11.Considering the fact that the suit is of the year 2015, the Trial Court is directed to dispose the suit on merits and in accordance with law, as expeditiously as possible, preferably, within a period of 15 months from the date of receipt of a copy of this order.

NCC : Yes/No
Index : Yes/No

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Internet : Yes/No
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