

In the High Court of Judicature at Madras

Dated : 20.1.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

Civil Revision Petition (PD) No.3258 of 2014 and MP.Nos.1 and 2 of 2014

T.Kokila

...Petitioner

Vs

1.A.Jayanthi

2.Umayal

3.S.Rajalakshmi

4.The Manager, HDFC Bank,
Pollachi-2.

5.The Manager, IDBI Bank,
Kamaraj Road, Mahalingapuram,
Pollachi.

...Respondents

PETITION under Article 227 of The Constitution of India against the petition and order dated 17.7.2014 made in I.A.No.431 of 2014 in O.S.No. 336 of 2013 on the file of the First Additional District Court, Coimbatore.

For Petitioner : Ms.P.T.Asha for M/s.Sarvabhauman Associates

For Respondent-1 : No appearance

ORDER

The revision petition arises out of an order passed by the Trial Court directing the first defendant to get into the witness box first, before the plaintiff could get in.

2. Heard Ms.P.T.Asha, learned counsel for the petitioner. On 1.9.2014, notice of motion was ordered in the above revision. The first respondent herein is the plaintiff in the suit. It was on her application that the Trial Court passed the order impugned. The first respondent was served with notice way back on 13.9.2014. Unfortunately, she has not chosen to enter appearance so far. Her name is also printed in the cause list. However, there is no representation for her. The other respondents are only defendants in the suit. Therefore, their non appearance is immaterial.

3. The suit was one for partition of the first respondent/plaintiff's 1/4th share in the suit schedule properties and for consequential decrees of permanent injunction. After the petitioner filed a written statement and the first respondent/plaintiff also filed a reply statement, the first respondent/plaintiff took out an application in I.A.No.431 of 2014 claiming that the first defendant set up a Will dated 21.4.2009 and a settlement deed dated 8.3.2010 and that therefore, the first defendant should go to the witness box first, in terms of the provisions of Order XVIII Rule 1 of the Civil Procedure Code. This claim has been accepted by the Trial Court and the petitioner has been asked to begin by getting into the witness box first.

4. But, in a partition suit, any claim made by the defendants on the basis of a Will or settlement, may not really shift the burden in such a manner as to direct the defendants to go to the witness box first. In every partition suit, the plaintiff is a defendant and the defendant is a plaintiff. The

plaintiff has actually denied the execution of a Will and a deed of settlement. Therefore, this is not a case where the Trial Court could have asked the first defendant/petitioner herein to go to the witness box first.

5. In view of the above, the civil revision petition is allowed setting aside the impugned order. The Trial Court shall take up the suit for disposal. The suit shall be disposed of within a period of four months. Consequently, the above MPs are closed.

20.1.2015

Internet : Yes

To
The First Additional District Court, Coimbatore.

RS

V.RAMASUBRAMANIAN,J
RS

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