

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.3386 of 2015

and

M.P. No.1 of 2015

1.C.Bhavani
2.Minor Varshini
(Represented by her mother and
next friend the first petitioner)

.. Petitioners/
Defendants 1 and 2

Vs.

1.Minor Mahila
D/o.Krishnaraj
rep by her mother and next friend Subhashini
w/o.Late Krishnaraj
Poonandanvalasu
Pethampalayam, Perundurai Taluk,
Erode District.

.. 1st Respondent/Plaintiff

2.State represented by
The District Collector,
Erode District, Erode.

3.The Revenue Divisional Officer,
Gobichettipalayam,
Gobichettipalayam Taluk, Erode District.

4.The Director
Director of Collegiate Education, Chennai.

5.The Joint Director,
Director of Collegiate Education,
Race Course Road,
Coimbatore.

6.The Secretary,
Gobi Arts and Science College
represented by its Secretary
Karattadipalayam
Gobichettipalayam.

7.The Principal
Gobi Arts and Science College,
Karattadipalayam
Gobichettipalayam.

.. Respondents 2 to 7/
Defendants 3 to 8

Prayer:- This Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 17.04.2015 made in I.A.No.1018 of 2014 in O.S.No.117 of 2014 on the file of the District Munsif Court, Gobichettipalayam.

For Petitioners : Ms.T.Ramadevi

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 17.04.2015 made in I.A.No.1018 of 2014 in O.S.No.117 of 2014 on the file of the District Munsif Court, Gobichettipalayam.

2.The first respondent/minor, who represented by her mother, has filed a suit in O.S.No.117 of 2014 for declaration that she is the legal heir of one late K.S.Krishnaraj, s/o.K.K.Subramaniam under Hindu Succession Act and also restraining the defendants 5 to 8 from disbursing the death benefits, gratuity, provident fund and also a share in the pension amounts due to legal heirs of the said Krishnaraj on his death including the plaintiff's 1/3rd share to the defendants 1 and 2 by means of a permanent injunction. During the pendency of the suit, the defendants 1 and 2 filed an application in I.A.No.1018 of 2014 for rejection of plaint. The trial Court, after hearing both sides, dismissed the application, against which, the present revision petition is preferred by the revision petitioners/defendants 1 and 2.

3.Today, the matter is posted under the caption 'for dismissal'. When the matter is taken up for hearing, learned counsel for the revision petitioners is present and submits that the revision petitioners have filed an application in I.A.No.1018 of 2014 for rejection of plaint under Order VII Rule 11 of C.P.C., which was dismissed on 17.04.2015 She further submits that the first revision petitioner is the wife of the deceased Krishnaraj and the second

revision petitioner is his daughter. The first respondent herein is not a legal heir of the deceased Krishnaraj and she has not filed any scrap of papers to prove the same and that the suit is not maintainable. Therefore, she prayed for allowing of this revision petition.

4. Heard the learned counsel for the revision petitioners. Notice to the respondents is dispensed with.

5. The first respondent/minor, who represented through her mother as guardian, has filed the suit for the aforesaid reliefs stating that the deceased Krishnaraj married her mother Subhashini on 15.09.2002 and she gave birth to a child, the first respondent herein. After the birth of the child, the first respondent's mother came to know that her husband has already got married to the first defendant/first revision petitioner herein and they are having a child, the second defendant. Since the father of the first respondent died, she filed the suit in O.S.No.117 of 2014. During the pendency of the suit, the defendants 1 and 2/revision petitioners have filed an application in I.A.No.1018 of 2014 under Order VII Rule 11 of C.P.C. for rejection of plaint stating that the suit is not maintainable and the first respondent is not a legal heir of the deceased Krishnaraj.

6. Now it is appropriate to incorporate Order VII Rule 11 of C.P.C., which runs as follows:

"11.Rejection of plaint.____The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written on paper insufficiently stamped, and the plaintiff does not make good the deficiency within the time, if any, granted by the Court.

(d) where the suit appears from the statement in the plaint to be barred by any law;

[(e) where it is not filed in duplicate; (f) where the plaintiff fails to comply with the provisions of rule 9];

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]"

7. Considering the aforesaid circumstances of the case,

whether the first respondent/plaintiff is the legal heir of the deceased Krishnaraj or not is a question of fact and it is not a question of law and the same has to be decided by the trial Court only after letting oral and documentary evidence and it cannot be decided prima facie at this stage. Under such circumstances, the trial Court has rightly held that only Civil Court alone has jurisdiction to decide and declare the legal heir of the deceased Krishnaraj. In my view, the order passed by the trial Court does not warrant any interference and the same is hereby confirmed. Therefore, this Civil Revision Petition deserves to be dismissed and it is hereby dismissed.

8. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

03.11.2015

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To

The District Munsif Court, Gobichettipalayam.

R.MALA,J.

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