

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **05.02.2015**

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Civil Revision Petition (PD) No.**100** of **2012** and
Civil Miscellaneous Appeal No.**208** of **2012**
and
M.P.Nos.**1** & **1** of **2012**

C.R.P.(PD)No.100 of 2012

1. S.K.Subramaniam
2. Sakunthala
3. Premalatha
4. Minor Suki

.. Petitioners

- Vs -

Chinnakannu @ Ranganayaki

.. Respondent

Prayer in C.R.P.:- Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decratal order dated 21.10.2011 made in I.A.No.855 of 2011 in O.S.No.6 of 2003 on the file of the District Munsif cum Judicial Magistrate, Perundurai.

For Petitioners : Mr.N.Manokaran

For Respondent : Mr.A.K.Kumarasamy

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C.M.A.No.208 of 2012

1. S.K.Subramaniam
2. Sakunthala

3. Premalatha
4. Minor Suki

.. Appellants

- Vs -

Chinnakannu @ Ranganayaki

.. Respondents

Prayer in C.M.A.:- Civil Miscellaneous Appeal filed under Order 43 Rule 1(u) of Civil Procedure Code to set aside the order of remand made in the judgment and decree dated 27.04.2011 made in A.S.No.4 of 2009 on the file of the Sub Court, Perundurai remanding the matter to the Trial Court by reversal of the judgment and decree dated 26.10.2007 made in O.S.No.6 of 2003 on the file of the District Munsif cum Judicial Magistrate Court Perundurai.

For Petitioners : Mr.N.Manokaran

For Respondent : Mr.A.K.Kumarasamy

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COMMON JUDGMENT

The appellants in C.M.A.No.208 of 2012 are the petitioners in C.R.P (PD) No.100 of 2012 and they are defendants 1, 3, 4 and 5 in O.S.No.6 of 2003 on the file of the learned District Munsif cum Judicial Magistrate, Perundurai. The respondent in the C.M.A and C.R.P. is one and the same person who is the sole plaintiff in O.S.No.6 of 2003. O.S.No.6 of 2003 was filed by the plaintiff for partition and for separate allotment of half share in the suit property to the plaintiff. The trial Court decreed the suit as prayed for by decree and judgment dated 26.10.2007. The

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suit was filed originally against Mr.S.K.Subramaniam (the first defendant), Mr.S.K.Ramachandran (the second defendant) and Ms.Sagunthala (the third defendant). Pending the suit, Mr.S.K.Ramachandran (the second defendant) died and therefore the defendants 4 and 5 were added as his Legal Representatives.

2. The appellants herein, aggrieved over the decree and judgment, filed an appeal in A.S.No.4 of 2009 before the learned Subordinate Judge, Perundurai. During the pendency of the appeal, the plaintiff filed I.A.No.252 of 2011 to receive documents as additional evidence and the defendants filed I.A.No.309 of 2011 to receive documents as additional evidence.

3. The lower appellate Court allowed I.A.No.252 of 2011 and dismissed I.A.No.309 of 2011 and by a common judgment, the lower appellate Court also allowed A.S.No.4 of 2009 thereby setting aside the decree and judgment of the trial Court and remanded the matter back to the trial Court for fresh trial with a further direction that the plaintiff should amend the suit suitably in respect to the title to the suit properties and after that the

defendants will be at liberty to file their additional written statement if any. It was further directed that after framing necessary additional issues if any and after giving sufficient opportunities to both sides to adduce any further evidence the trial Court shall dispose of the case in accordance with law.

4. Challenging the said remand order, the appellants are before this Court with the appeal in C.M.A.No.208 of 2012. After the above remand order was made, the plaintiff filed I.A.No.855 of 2011 before the Trial Court to amend the suit. The trial Court allowed the same by a decreetal order dated 21.10.2011. Challenging the same, the appellants/defendants have filed the revision in C.R.P.No.100 of 2012. Both the matters were ordered to be listed before me by the Hon'ble the Chief Justice and accordingly they are listed before me for disposal.

5. I have heard the learned counsel on either side and perused the records carefully.

6. There are three items of suit property. According to the plaintiff, all the three items were originally purchased by one Paruppukkarar Reddiyar. Mr.Paruppukkarar Reddiyar died intestate leaving behind his two sons viz., Mr.Guruswami Reddiyar and Krishnaswami Reddiyar. The wife of Mr.Guruswami Reddiyar is Mrs.Rangammal. The wife of Mr.Krishnaswami Reddiyar is Mrs.Sundarammal. Mr.Krishnaswami Reddiyar and his wife Mrs.Sundarammal died intestate. Mrs.Rangammal had a son by name Velusamy and daughter by name Saroja. Mr.Velusamy's wife is the plaintiff. Mr.Velusamy died intestate leaving behind the plaintiff as his sole legal heir. Ms.Saroja died as spinster.

7. Mr.Krishnaswami Reddiyar died intestate leaving behind one Sundarammal as his sole legal heir. Mrs.Sundarammal has got three children who are the defendants 1, 2 and 3. Mrs.Sundarammal also died intestate. During the pendency of the suit, the second defendant died and his legal heirs are the defendants 4 and 5.

8. According to the plaintiff, she is entitled for 1/2 share. The defendants denied the same and contested the suit. In the

written statement they contended that the plaintiff is not the legally wedded wife of Mr.Velusamy and she is not entitled for any share in the suit property. Based on the above pleadings, the trial Court framed as many as four issues. The first issue is as to whether the plaintiff is the legally wedded wife of Mr.Velusamy. The parties were called upon to let in evidence. Accordingly, on the side of the plaintiff as many as six witnesses were examined and eight documents were exhibited. On the side of the defendants two witnesses were examined and 28 documents were exhibited. One of the document submitted by the defendants was Ex.B13 dated 19.01.1969. That document is a sale executed by the Insolvency Court in respect of the suit property as well as other properties jointly in the name of Mrs.Sundarammal and Mrs.Rangammal mentioned herein above. In respect of the property other than the suit property herein, Mrs.Rangammal sold away her undivided 1/2 share in favour of Mrs.Sundarammal under Ex.B14.

9. So far as the suit property is concerned, it is mentioned in Ex.B13 that they are jointly owned and possessed by Mrs.Sundarammal and Mrs.Rangammal. It came to light that

when Paruppukarar Reddiar was alive, in an insolvency case he was declared insolvent and the suit property was sold in Court auction. One Kudthbudeen Sahib was the auction purchaser from whom under Ex.B13 Mrs.Sundarammal and Mrs.Rangammal purchased the property jointly. After marking the above documents, additional issues were framed and one such additional issue is whether in the insolvency proceedings in I.P.No.12 of 1949, the suit property was entrusted to the Official Assignee and whether they were purchased jointly by Mrs.Sundarammal and Mrs.Rangammal.

10. Having considered all the above, the Trial Court found that Mrs.Sundarammal and Mrs.Rangammal are the joint owners of the suit property by virtue of Ex.B13 and their legal heirs are therefore entitled for 1/2 share each. The Trial Court also found that the plaintiff is the legally wedded wife of Mr.Velusamy and accordingly she is entitled for 1/2 share. That is how the Trial Court decreed the suit.

11. It is also brought to my notice that an interlocutory application filed before the lower Court to amend the suit so as

to include the pleading regarding I.P.No.12 of 1949 and subsequent auction sale made in favour of Kuthbudeen and the sale made in favour of Mrs.Sundarammal and Mrs.Rangammal was dismissed on the same date of the judgment in the suit. The lower appellate Court has found that since there is no pleading either on the side of the plaintiff or on the side of the defendants with regard to I.P.No.12 of 1949 and the auction sale made in favour of Kuthbudeen, the lower appellate Court found that the matter should be remanded back so as to enable the plaintiff to amend the suit accordingly and allow the parties to let in further evidence. As against the remand order, the appellants are before this Court with C.M.A.No.208 of 2012.

12. So far as the remand order made by the lower appellate Court is concerned, in my considered opinion, there is no illegality in it. It is not as though the property were never common between Mrs.Sundarammal and Mrs.Rangammal. In the plaint it is pleaded that Mrs.Sundarammal and Mrs.Rangammal were joint owners of the suit property as legal heirs of Mr.Gurusamy and Mr.Krishnasamy respectively, who were the sons of Mr.Paruppukarar Reddiar. It is no where the

case of the defendants in the written statement that the said plea is false. For the first time, only during trial, documents were produced showing that the suit property was sold in auction in I.P. proceedings and Mrs.Sundarammal and Mrs.Rangammal purchased the same from the auction purchaser. Thus, in my considered opinion, the lower Court was right in remanding the matter back to the trial Court so as to enable the parties to amend the suit and to let in additional evidence. The explanation of the plaintiff is that she was not aware of the I.P. proceedings and the sale made in the year 1969 as she got married to Mr.Velusamy only in 1970. Even the defendants have not mentioned the same in the written statement. Thus, it appears, the defendants were also not aware of the said fact at the time when they filed the written statement. On this technical ground, in my considered opinion, we cannot allow any party to suffer. Therefore, I am in full agreement with the order of the lower appellate Court.

13. Now coming to the Civil Revision Petition, after remand order, the petition to amend the plaint was allowed and the plaintiff was examined. Further the case has been listed for

cross examination. Since I have held that the remand order made by the lower appellate Court is sustainable, as a corollary, I have to hold that the order allowing I.A.No.855 of 2011 by the trial Court is also sustainable.

14. In view of all the above, I do not find any merit in the appeal as well as in the revision.

15. In the result, the C.M.A.No.208 of 2012 and C.R.P.No.100 of 2012 are dismissed and the Trial Court is directed to expedite the trial. Consequently, the connected miscellaneous petitions are closed.

05.02.2015

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Index : Yes / No

S.NAGAMUTHU,J.

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To

1. The Subordinate Judge,
Perundurai.
2. The District Munsif cum Judicial Magistrate,
Perundurai.
3. The Head Clerk,
V.R. Section,
High Court, Madras.

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