

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.3964 of 2013
and M.P.No.1 of 2013

1.G.Ponnusamy
2.G.Gopal
3.J.Amudha
4.Arunkumar

.. Petitioners

Vs

1.A.Suseela
2.Jayaganthi
3.P.Vijayalakshmi
4.G.Kasthuri
5.G.Gnanasoundari

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 29.04.2013 made in I.A.No.14 of 2012 in O.S.No.2 of 2011 on the file of the III Additional District Court, Vellore at Tirupattur.

For Petitioners : Mr.S.Silambarasan
Senior Counsel
for Mr.A.Murali

For Respondents : Mrs.Hema Sampath
Senior Counsel
for Mr.S.Prabhu (For R1 to R4)
Mrs.N.Parameswari (For R5)

ORDER

The Civil Revision Petition is filed order dated 29.04.2013 made in I.A.No.14 of 2012 in O.S.No.2 of 2011 on the file of the III Additional District Court, Vellore at Tirupattur.

2.Heard Mr.S.Silambarasan, learned Senior Counsel appearing for the petitioners, Mrs.Hema Sampath, learned Senior counsel appearing for the respondents 1 to 4 and the learned counsel appearing for the 5th respondent.

3.Learned senior counsel appearing for the petitioners submitted that the respondents 1 to 4 as plaintiffs filed a suit in O.S.No.2 of 2011 for partition and separate possession of 4/8 share in A to D Schedule properties. The revision petitioners filed an application in I.A.No.14 of 2012 to reject the plaint stating that during the lifetime of their father in the year 1973 there was a partition in respect of A schedule property, a Koorchit has been executed and that has been accepted by the Income Tax Department. He further submitted that their father also executed a Will in the year 1974 and he died in the year 1975. So the Will has been came into effect in pursuance to the Will as well as the Koorchit and there was a mutation of revenue records

and the property has been dealt with. He would also submitted that the plaintiffs filed a suit for partition after the Amended Act 2005 came into effect. To substantiate his argument he also relied upon the decision reported in ***CDJ 2015 SC 869 (Prakash and others vs. Phulavati and others)*** stating that the Act has no retrospective effect since the property has already been partitioned in the year 1973 and so, on the date of the Act came into effect no property has been available for partition. Hence, he pray for setting the impugned order passed by the Trial Court.

4. Resisting the same, the learned senior counsel appearing for the respondents 1 to 4/plaintiffs submitted that the genuinity of the Koorchit and the Will has to be decided only at the time of trial and it is only a question of fact. She further submitted that B Schedule property belongs to the mother and the daughters are entitled share in the property. She would also submitted that the plaint shall not be rejected for cause of action has not been mentioned. But the cause of action is the bundle of facts and that can be decided only at the time of trial. Therefore, the Trial Court after considering the various Apex Court decisions came to the correct conclusion. Hence, he prayed for dismissal of the revision petition.

5. Considered the rival submissions made on both sides and perused the typed set of papers.

6. The suit is for partition filed by the sisters against their brothers stating that A schedule property is the ancestral property and they are entitled share in B to D Schedule Properties also as per the Amended Act 2005. The defendants 1 to 4/revision petitioners filed an application for rejection of the plaint stating that there is no cause of action for filing the suit since there was partition in the year 1973 by way of Koorchit in respect of the ancestral property and in the year 1974 their father executed a Will in respect of their share. The father died in the year 1975 and so, no property is available for partition. Hence, there is no cause of action for filing the suit. For this proposition, the learned Senior Counsel appearing for the petitioners relied upon the decision reported in ***CDJ 2015 SC 869 (Prakash and others vs. Phulavati and others)***. But there is no quarrel over the proposition laid down in the citation that the Amended Act 2005 has no retrospective effect.

7. The only point to be decided is whether it is a fit case for rejecting the plaint? It is admitted by both sides that B schedule property belong to their mother. As per the Hindu Succession Act, the daughters are also entitled

share in the property. Admittedly there is no partition in respect of C schedule property and the plaint shall not be rejected in piecemeal.

8. Now the petitioners have put forth their claim only on the basis of the Koorchit executed in the year 1973 and the Will alleged to be executed in the year 1974. The point whether the Will and the Koorchit are true and genuine are to be decided only at the time of trial after letting oral evidence. Further while deciding the petition for rejection of the plaint, only the plaint averments should be taken into account. In such circumstances, the finding of the Trial Court is sustainable. Furthermore, it is well settled dictum of the Hon'ble Apex Court that cause of action is not a single event and it is a bundle of facts that has to be decided only at the time of trial. So, the Trial Court has considered the various Apex Court decisions and passed a well reasoned order. Therefore, I am of the view that the impugned order passed by the Trial Court does not warrant any interference and it is hereby confirmed. Hence, I do not find any merits in the Civil Revision Petition and the same deserves to be dismissed.

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

R.MALA. J.,

cse

10.At this juncture, both the learned counsel for the petitioners and the respondents sought for early disposal of the suit. Considering their representation and since the suit is of the year 2011, the Trial Court is directed to dispose of the suit in O.S.No.2 of 2011 within a period of six months from the date of receipt of a copy of this order.

26.11.2015

Index: Yes/No
Internet: Yes/No
cse

To

The III Additional District Court,
Tirupattur, Vellore.

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