

In the High Court of Judicature at Madras

Dated : 27.1.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

Civil Revision Petition (PD) No.986 of 2013 & M.P.Nos.1 of 2013 & 1 of 2014

1.Mrs.Renuka
2.Mr.Radhakrishnan
3.Mr.Ramakrishnan
4.Mrs.V.Rajalakshmi

...Petitioners

Vs

1.Mrs.A.Kamalam
2.Mr.A.Doraisamy
3.Mr.A.Rajagopal
4.Mrs.A.Leelavathy (a) Pappal
5.Mr.Jayachanran
6. Mrs.Indirani
7.Mr.Ravichandran
8.Mrs.Radha
9.Mr.Arun Karthik
10.Mr.Ponusamy

...Respondents

PETITION under Article 227 of The Constitution of India against the fair and decretal orders dated 5.10.2012 made in I.A.No.3 of 2012 in O.S.No.534 of 2010 on the file of the Fifth Additional District and Sessions Court (Fast Track Court No.3), Coimbatore.

For Petitioners : Mr.N.Sridhar
For Respondents 2 & 3 : Mr.P.V.Balasubramanian
for M/s.BFS Legal

ORDER

The petitioners, who are the plaintiffs in a suit for partition, have come up with the above revision petition challenging an order of the Trial Court

refusing to allow an amendment.

2. Heard Mr.N.Sridhar, learned counsel for the petitioners and Mr.P.V. Balasubramanian, learned counsel appearing for the respondents 2 and 3. The other respondents have already been set ex parte in the suit. Therefore, service of notice to them is dispensed with.

3. The petitioners herein are the descendants of one Chinnasamy Naidu. The respondents herein are the descendants of one Govindasamy Naidu. It appears that the property in dispute was purchased under a sale deed dated 5.4.1911. The names of the purchasers were indicated in the document as Chinnasamy Naidu, Govindasamy Naidu and Appa Naicker. A suit was filed in O.S.No.280 of 1994 on the file of the Subordinate Court, Tirupur by the father of the present petitioners for partition. The plaint was rejected at the instance of the second respondent herein in I.A.No.1179 of 1994. A regular appeal was filed by the father of the petitioners herein, but it was withdrawn later with liberty to file a fresh suit. With the liberty so granted to their father, the petitioners filed the present suit, out of which, the revision arises namely O.S.No.534 of 2010.

4. In the suit, it was pleaded by the petitioners that Chinnama Naidu (a) Chinnasamy Naidu and Govindasamy Naidu, who were brothers, jointly purchased the suit property along with a third party by name Appa Naicker under the document dated 5.4.1911.

5. The respondents 2 and 3 filed two written statements followed by an application for rejection of plaint in I.A.No.605 of 2011. The basis for the

application for rejection of plaint was that the suit was hit by the provisions of the Benami Transactions (Prohibition) Act, 1988.

6. During the pendency of the application for rejection of the plaint, the petitioners/plaintiffs took out an application in I.A.No.3 of 2012 for amendment of the plaint. The nature of the amendment sought by the petitioners can be better appreciated by extracting the details of the proposed amendment, which read as follows :

"After para 4 of the plaint, add the following as para 4a :

Late Govindasamy Naidu as a coparcener of the Hindu undivided family represented the interest of the other coparcener viz his brother Chinnama Naidu under the registered sale deed dated 5.4.1911. Govindasamy Naidu, who was standing and holding the position in a fiduciary capacity vis-a-vis his brother Chinnama Naidu had purchased the property under the aforesaid sale deed for the benefit of himself and his brother and the two brothers were exercising rights of ownership over the properties. Thus, the purchase as coparcener, Govindasamy Naidu never denied or questioned the rights of Chinnama Naidu. On the other hand, he admitted the rights of Chinnama Naidu as evidenced by registered mortgage deed dated 5.11.1911."

But, the Court below dismissed the application for amendment, forcing the petitioners to come up with the above revision.

8. The Trial Court, in my opinion, was right in disallowing the

application for amendment. The plea of coparcenary was not actually made by the petitioners in their plaint in O.S.No.534 of 2010. It was not even made in the suit filed by their father in O.S.No.280 of 1994.

9. The apprehension of the petitioners is that the application of the respondents 2 and 3 under Order VII Rule 11, relying upon the Benami Transactions (Prohibition) Act, 1988 may pose an obstacle.

10. But, the question as to whether Section 4 of the Benami Transactions (Prohibition) Act, 1988 would apply or not, is a pure and a simple legal question, which could have been raised by the petitioners by filing a reply statement to the written statements. Such a plea will not go contrary to what is already pleaded in the plaint.

11. Therefore, the civil revision petition is dismissed. No costs. Consequently, the above MPs are also dismissed.

12. It will be open to the petitioners to file a reply statement confining the same to the averments in the written statements and to Section 4 of the Benami Transactions (Prohibition) Act, 1988. The Court below shall dispose of the suit within a period of four months.

27.1.2015

Internet : Yes

To
The Fifth Additional District and Sessions Court (Fast Track Court No.3),
Coimbatore.

RS

V.RAMASUBRAMANIAN,J
RS

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