



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 3/3/2015

C O R A M

WEB COPY

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD (MD) No.2442 of 2014

Karpagavinayagam ... Petitioner/1st Respondent/1st Defendant

Vs

1. P.Muthuramu ... 1st Respondent/Petitioner/Plaintiff
2. Sangarammal ... 2nd Respondent/2nd Respondent/2nd Defendant

Petition filed under Article 227 of the Constitution of India to challenge the order of the learned Principal District Munsif, Ambasamudram dated 1/8/2014 in I.A.No.130 of 2014 in O.S.No.113 of 2013 pending on the file of the learned Principal District Munsif Court, Ambasamudram.

For petitioner ... Mr.N.Ramesh

For respondents ... Mr.S.Meenakshi Sundaram

O R D E R

The first defendant in the suit is the petitioner herein, who has filed the above revision challenging the order allowing the application under Order 18 Rule 1 of the Code of Civil Procedure, directing the first defendant to commence the trial.

2. The plaintiff has filed the suit for partition.

3. The case of the plaintiff is that the suit property belong to Madasamy Pillai and the plaintiff and the second defendant are the daughters and the first defendant is the son. The said Madasamy Pillai died intestate and his wife also died on 19/10/2011. Therefore, the plaintiff is claiming 1/3rd share in the suit property.

4. In the written statement, the first defendant had admitted that the property belong to Madasamy Pillai. However, he claims that there was a Will executed by his mother, wherein, the entire suit property was bequeathed in favour of the son and it was stated that the daughters had relinquished their share. As the first defendant has specifically stated that he is claiming right to the Will which is disputed by the plaintiff, the plaintiff has



filed the application calling upon the first defendant to lead evidence first.

5. The said application was resisted by the first defendant contending that it is only the plaintiff who has to let in evidence first and prayed for dismissal of the application.

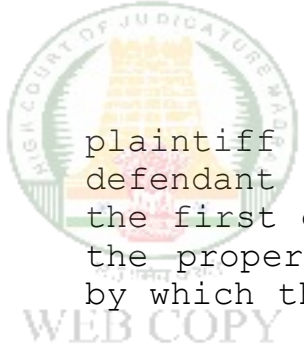
6. The learned District Munsif, Ambasamudram, who tried the application, allowed the same directing the first defendant to lead evidence first. Aggrieved by the same, the first defendant/revision petitioner has filed this revision petition.

7. Heard the learned counsel appearing for the petitioner the learned counsel appearing for the respondents.

8. The learned counsel appearing for the revision petitioner contended that a person, who moves the Court first and seeks the relief has to necessarily prove his case first. The plaintiff has to succeed on his own merits of the case and cannot pick holes in the case of the first defendant. The first defendant has not admitted the case of the plaintiff in toto. But he has come forward only with a contentious case. Therefore, the burden is definitely on the plaintiff to prove. Once the plaintiff discharges the burden on her, onus shifts on the first defendant. As per Section 102 of the Indian Evidence Act, the onus is always on the plaintiff and once the plaintiff discharges the initial burden and makes out a case, then onus shifts on the defendant to prove the circumstances. Therefore, it was contended by the revision petitioner that the plaintiff was very well aware of the Will executed by the mother and deliberately failed to challenge the validity of the same.

9. The admitted facts are that the property belong to Madasamy Pillai. But in the written statement, the first defendant has contended about the Will was executed by his mother in his favour. While so, the first defendant has the burden on him to establish the genuineness of the Will in the manner known to law. In the event of the Will being proved by the first defendant, the plaintiff may lose the case. However, if the Will is not proved to be true and valid, the plaintiff stands to succeed in the suit. In such circumstances, the initial burden of proof is on the first defendant who has set up the Will. On the above said principle, the trial Judge had directed the first defendant to lead in evidence first.

10. The learned counsel for the petitioner also contended that as per Order 18 Rule 1 of the Code of Civil Procedure, only when the defendant admits the fact alleged by the plaintiff in the plaint and also contends that either on point of law or on some additional facts alleged by the first defendant, the



plaintiff is entitled to any part of the relief, the first defendant has the right to begin the case. In the present case, the first defendant though admitted the case of the plaintiff that the properties belong to Madasamy Pillai has introduced the Will by which the right of the plaintiff is denied.

11. It will be very useful to extract Order 18 Rule 1 of the Code of Civil Procedure and the same reads as follows:-

"1. Right to begin: The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin."

12. As per the above Rule, the first defendant though admitted the right of the plaintiff had introduced the Will by which the right of the plaintiff is denied.

13. In such circumstances, the initial burden is on the first defendant and it is for the first defendant to lead evidence first. In this regard, the learned counsel for the respondent pressed into service to the decision reported in **{2013 (1) TNCJ - 926 (Mad) }**

KRISHNAKUMAR AND OTHERS Vs. V. SEETHALAKSHMI AND OTHERS, in paragraph 8, it has been held thus:-

"In this case too, the burden of proof lies on the party, who asserts a particular fact. The particular fact, which is asserted is, whether the property belonged to Narayana Asari absolutely. That fact has been asserted by the plaintiffs and also admitted by the defendants. Therefore, there is no burden of proof on the plaintiffs to prove that fact. Insofar as the onus of proof is concerned, it is held in that judgment, referred to above, that onus of proof by a party would cease, the moment, the opposite party admits the transaction. In this case, the onus of proof is on the defendants to prove the execution of the Will, that has been denied by the plaintiffs. Once defendants are able to prove the Will to the satisfaction of the Court, the suit filed by the plaintiffs will be dismissed and there is no necessity to go into



the further aspects of the matter, by letting evidence by the plaintiffs. Considering all these aspects, the Court below initially directed the defendants to lead evidence first and that was properly appreciated, while considering the Review Application. Further, I do not find any infirmity in the order passed by the Court below in the Review Application and there is no error apparent on the face of record to interfere with the same."

14. In the above mentioned case, the burden of proof vis-a-vis the onus of proof have been discussed based on **BAJAJ AUTO LIMITED Vs. T.V.S.MOTOR COMPANY Ltd.**, reported in **2010 (5) L.W-454**.

15. In the present case, the plaintiff and the first defendant had admitted that the property belonged to their father. But the only defence, the defendant has taken is about the Will. Therefore, the entire case revolves on the above Will. If the Will is proved, the suit will be dismissed. If the Will is disproved, the plaintiff will get the relief. In such circumstances, the Court below directing the first defendant to lead evidence is correct. I find there is no infirmity in the order of the Court below and this petition deserves to be dismissed.

16. In the result, this Civil Revision Petition is dismissed, confirming the order of the learned Principal District Munsif, Ambasamudram dated 1/8/2014 in I.A.No.130 of 2014 in O.S.No.113 of 2013 pending on the file of the learned Principal District Munsif, Ambasamudram. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(A.E.,)

/True Copy/

Sub-Assistant Registrar

To

The Principal District Munsif, Ambasamudram.

+1cc to Mr.N.Ramesh, Advocate, in SR. No.9980.

+1cc to Mr.S.Meenakshi Sundaram, Advocate, in SR. No.9974.

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