



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.09.2015

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

C.R.P.NPD(MD)No.1725 of 2015

and

M.P.(MD)No.1 of 2015

Lalith ... Petitioner/Petitioner 5th Defendant

Vs.

1.Ramadass ... 1st Respondent/1st Respondent/Plaintiff

Janaki (died)

2.Mohandass

3.Krishnadass

4.Baby

5.Vijayakumari

6.Sunil Kumar

7.Suji

8.Suma

...2 to 8 Respondents/3 to 9 Respondents/
2 to 4 & 6 to 9 Defendants

Prayer: Civil Revision Petition is filed under Section 115 of CPC., against the order passed in I.A.No.798 of 2014 in O.S.No.208 of 2011 dated 03.07.2015 on the file of the learned I Additional District Munsif Judge, Kuzhithurai.

For Petitioner : Mr.S.Meenakshi Sundaram

ORDER

As the C.R.P. involves only a short point, we shall dispose of the CRP today at the admission stage itself.

2.This Revision arises out of the dismissal of I.A.No.798 of 2014 in O.S.No.208 of 2011.

3.The plaintiffs and defendants 2 to 5 in O.S.No.208 of 2011 are the children of late Ponnumani Nadar and the first defendant namely, Janaki and the defendants 6 to 9 are the children of the deceased son of Ponnumani Nadar - Janaki. Ramasamy, a son of late Ponnumani Nadar and Janaki sought partition of the properties impleading all the legal heirs of late Ponnumani Nadar.

4.Written statement has been filed by the second defendant. The other defendants have adopted the same.

5.The suit has been part heard. Ramadass deposed as P.W.1. Thereafter, since the defendants remained exparte, exparte preliminary decree was passed. After 89 days, the fifth defendant filed I.A.No.798



of 2014 to set aside the exparte decree. She has stated that the delay was due to the fact that she was laid up. She sought for an opportunity. This was opposed by the respondent by filing counter.

6. After hearing both sides, the Trial Court dismissed the said I.A. on the ground that she was laid up due to ailment has not been proved by acceptable medical evidence, this is a senior citizen case, it should be disposed of quickly, the defendant has not approached the Court with clean hands.

7. According to the learned counsel for the petitioner, even as per the plaint allegations that this defendant is entitled to have share consequent upon the death of her father Kumaradoss, a son of the common ancestor, namely, late Ponnumani Nadar and the extent of the share pleaded itself is disputed, in such circumstances, the Trial Court could have given an opportunity to contest the case on merits. Further, it is a partition suit. A partition suit is for all the property disputes between the parties, unless this problem is solved, complication also will arise during the final decree proceedings.

8. I have anxiously considered the rival submissions, perused the material on record and the impugned order.

9. This is a partition suit. Brothers and sisters and kith and kin are fighting for their share and the extent of the share each is entitled to be decided and it has to be worked by metes and bounds. Though only a partition suit will be get terminated. In a partition suit, parties will take opposite character, namely, plaintiff will become defendant and defendant will become plaintiff. The court is bound to work out the extent of the share to each is entitled to, whether he is a party to the suit or not. A declaration to that effect has to be made. Of course, the share claimed by the plaintiff who came to the court has to be declared that cannot be declined without working out or calculate the shares of others, either they are party to the partition suit or not.

10. At the time of passing the preliminary decree, the Court is bound to consider the nature of the property whether divisible or indivisible or whether it is liable for partition or whether all the properties are included in the suit and it must also decide who are the sharers and to what extent each is entitled to. Therefore, a preliminary decree should cover these details and thereafter the final decree in pursuance of the preliminary decree to be passed.

11. Now in this case both sides are close relatives. They are stated to be sharers. Consequent upon death of her father Kumaradoss who is a son of late of Ponnumani Nadar, Lalith the 5th defendant seeks her share. In such circumstances, in all fairness, the preliminary decree should be complete and it should be after dealing with the plea of the present petitioner.

12. Of course, there was delay of 89 days in filing the setting aside petition. The Trial Court very much concerned with the health condition of the 5th defendant. But that alone cannot be an yardstick in a petitioner filed under Section 5 Limitation Act. What the Court has to see is is there any sufficient cause to give an opportunity to the



defendants. Sufficient cause does not mean a strong case or a good case. It means a case, something remains to be adjudicated upon hearing both sides.

13. Now in this case already we have stated as to the stand of the parties and the scope of the partition suit. More particular in settling the shares at the preliminary decree stage itself. In such view of the matter, the ailment question will pale into insignificance.

14. In the facts and circumstances of this case, a liberal view can be taken. By giving an opportunity, the plaintiff also will not be prejudiced very much. The exparte preliminary decree obtained by him will go away. But, both sides are relatives. Awarding cost will add fuel to the fire.

15. In view of the foregoings, this CRP is allowed. The decree and fair order of the Trial Court passed in I.A.No.798 of 2014 in O.S.No.208 of 2011 are set aside. The said I.A.No.798 of 2014 stand allowed. Consequent upon this order, the appellant herein is directed to bring this order to the notice of the First Appellate Court now dealing with CMA is preferred as against the dismissal of the I.A. filed to set aside the exparte decree.

16. Within 4 months of the setting aside of the exparte decree, the Trial Court will dispose of the partition suit in O.S.No.208 of 2011. No costs. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To

1. The District Judge, Kanyakumari District at Nagercoil.

2. The Subordinate Judge, Kulithurai, K.K. District.

3. The I Additional District Munsif, Kulithurai, K.K. District.

Copy to

The Registrar (Judicial), Madurai Bench of Madras High Court, Madurai.

+1CC to Mr.C.Meenkshi Sundaram Advocate Sr.No.54852

GJM/AMF/9.10.15-3P-6C

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