

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.09.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.R.P No.4494 of 2011

&

M.P.No.1 of 2011

V.S.Durai Raj ...Petitioner/ 1st Defendant/ 8th Respondent

Vs.

1.Jayaseelan

2.Ponrani

3.Sundaraj

4.Daisyrani

5.Precilla

6.Jayakaran

7.Angel Early Star

...Plaintiffs/ Respondents 1 to 7/

Respondents 1 to 7

8.Nagabooshanam

...3rd Respondent/1st Petitioner/

Respondents 8

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 05.07.2011 made in I.A.No.164 of 2011 in O.S.No.70 of 1996 on the file of Subordinate Judge, Vellore.

For Petitioner : Mr.S.Mukunth
for M/s.Sarvabhauman Associates

For Respondents : Mr.Karthic
for M/s.T.S.Gopalan & Co. for R8

Mr.V.Raghavachari
for Respondents 5 to 7 & 3

For R1 : Died

For R2 and R4 : NA

ORDER

The fair and the decretal order dated 05.07.2011 and made in the application in I.A.No.164 of 2011 in O.S.No.70 of 1996 on the file of the Subordinate Judge, Vellore are under challenge in this Civil Revision Petition.

2. The revision petitioner herein is the first defendant in the suit in O.S.No.70 of 1996, whereas the respondents 1 to 7 are the plaintiffs and the 8th respondent is the third defendant in the suit.

3. The respondents 2 to 7, including the deceased first respondent, seems to have filed the above suit for partition to divide the properties into 15 equal shares and allot six of such shares to them by metes and bounds after having regard to good and bad soil and for the consequential relief of permanent injunction restraining the first revision petitioner / first defendant's son from putting up construction in the first floor on the southern side of the building in the first item of the suit properties.

4. The suit was contested by the revision petitioner along with the other defendants by filing their written statement. After formulating necessary issues, trial was commenced. After the closure of plaintiffs' side evidence, the evidence on the side of the defendants was also recorded and the 8th respondent, being the third defendant, was also extensively cross examined. Only at that time, she had come forward with an application in I.A.No.164 of 2011 under Order VIII Rule 9 CPC r/w. 151 CPC of the Code of Civil Procedure to permit her to file additional written statement. This petition was also strenuously contested by the revision petitioner/first defendant as well as by the 6th respondent.

5. After hearing both sides, the learned trial Judge had proceeded to allow the petition with a finding saying that if the petition is allowed no prejudice would be caused to the respondents. Being aggrieved by the impugned order dated 05.07.2011, the revision petitioner, being the first defendant, stand before this Court.

6. Heard Mr.S.Mukunth, learned counsel appearing on behalf of M/s.Sarvabhauman Associates, who are on record for the revision petitioner, Mr.V.Raghavachari, learned counsel for Respondents 3, 5 to 7 and Mr.Karthic, learned counsel for the 8th respondent.

7. It is revealed from the records that the eighth respondent herein, who is the petitioner, has stated in her

affidavit filed in support of the petition that the defendants 2 and 4 are her sisters and that they were died during the pendency of the suit. She has also stated that while they were staying along with her they were maintained by her and as per their last wishes, their shares in the suit properties should devolve upon her. It is further stated that only on the ground of expanding her share, as per the alleged last wishes of her sisters, viz., Defendants 2 and 4, she had sought the permission of the trial Court to file additional written statement.

8. It is pertinent to note here that after the completion of recording of evidence on the side of the plaintiffs, the petitioner was also examined and she was also extensively cross-examined and only at that time, she had come forward with this petition saying that as per the last wishes of her sisters viz., Defendants 2 and 4, their shares should devolve upon her. As rightly argued by Mr.S.Mukunth, the averments found in Paragraph 2 of the affidavit filed in support of the petition are highly unbelievable and it could not be allowed at the belated stage. Even at the time of filing of her written statement, if really her sisters had expressed their willingness to give their shares in favour of the 8th respondent, she would have definitely incorporated the desire of her sisters viz., Defendants 2 and 4 in the written statement. Unfortunately, she had not done so.

Keeping in view of the above facts, this civil revision petitions is allowed and the impugned order dated 05.07.2011 and made in I.A.No.164 of 2011 in O.S.No.70 of 1996 is set aside and the petition in I.A.No.164 of 2011 shall stand dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

gpa

To

The Subordiante Judge
Vellore

1 cc to M/s. Sarvabhuman Associates, Sr. 55951
1 cc to M/s. T.S. Gopalan and Co, Sr. 53870
1 cc to M/s.V. Ragavachari, Advocate, Sr. 53708

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