

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.02.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.4494 of 2015
and M.P.No.1 of 2015

V.Shanmugasundaram

... Petitioner

Vs

1.A.Anandhi

2.S.Ramaprakash

3.S.Anandprakash

4.S.Umamaheswari

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order passed in IA.No.567 of 2015 in OS.No.163 of 2012 dated 23.09.2015 on the file of the Principal Subordinate Judge, Erode.

For Petitioner : Mr.K.S.Jeyaganeshan
For Respondents : Mr.M.Guruprasad for R1

ORDER

The 1st defendant in the original suit in OS.No.163 of 2012 pending on the file of the Principal Subordinate Judge, Erode, is the petitioner in the revision. The 1st respondent herein is the plaintiff in the said original suit. Respondents 2 to 4 are defendants 2 to 4 in the original suit. The plaintiff, after framing of issues in the original suit, filed an application in IA.No.567 of 2015 under Order XVIII Rule 1 and 2 seeking a direction to the 1st defendant to lead evidence in proof of his case. The respondents 2 to 4 herein/defendants 2 to 4 in the original suit did not contest the

application by filing counter statement. On the other hand, the petitioner herein/ 1st defendant alone resisted the application contending that there were many aspects regarding which, burden of proof stood cast on the 1st respondent herein/plaintiff and disregarding the same, the 1st respondent/plaintiff chose to file such a petition to cast the burden of proof on the revision petitioner and the other respondents, namely, the defendants in the original suit.

2. The learned trial Judge after hearing both sides, by an order dated 23.09.2015, allowed the said application and directed the defendants in the original suit to lead evidence in proof of their case, before ever the plaintiff would be called upon to lead evidence. It is as against the said order of the learned trial Judge, the present Civil Revision Petition has been filed.

3. As pointed out supra, the respondents 2 to 4 are not interested in the outcome of the application filed by the 1st respondent herein/plaintiff before the trial Court and hence, they are not interested in either supporting or resisting the prayer made in the present Civil Revision Petition. The real contesting respondents, namely, the 1st respondent/plaintiff has entered appearance through counsel. The arguments advanced by Mr.K.S.Jeyaganeshan, learned counsel for the petitioner and Mr.M.Guruprasad, learned counsel for the 1st respondent are heard. The copy of the impugned order and the copies of other documents produced in the form of typed set of papers are also perused.

4. There was a joint family consisting of V.P.M.Vaiyapuri Mudaliar and his five sons, owning properties and the said joint family properties were subjected to a partition by virtue of a registered Partition Deed dated 11.09.1961. In the said partition, separate shares were allotted to each one of the sons of V.P.M.Vaiyapuri Mudaliar and Vaiyapurai Mudaliar himself. Thereafter, V.P.M.Vaiyapuri Mudaliar died intestate on 05.09.1967, leaving behind him, his wife Valliammal, daughter Savithri and five sons. According to the 1st respondent/plaintiff, the wife and daughter of V.P.M.Vaiyapuri Mudaliar released their shares under Release Deed dated 03.04.1968 in favour of five sons of V.P.M.Vaiyapuri Mudaliar and under a Release Deed dated 15.03.1976 executed by the other four brothers of the 1st respondent, they released their shares in favour of the 1st defendant, after receiving a sum of Rs.16,000/- each. It is the further contention of the plaintiff that since the amount paid by the 1st defendant to his brothers was taken from the joint family funds, the entire property including the share of the 1st defendant that came to him under the Partition Deed and the shares of the others he got by virtue of the Release Deeds were treated as joint family property of the plaintiff and the defendants 1 to 4. Based on the above said pleadings, the plaintiff had sought for the relief of partition and separate possession.

5. The 1st defendant, who is the petitioner in the revision denied the plaintiff's averment that the amount paid to the brothers of the 1st defendant was taken out of the joint family income derived from joint family business and that, the claim of the plaintiff that the share allotted to the 1st defendant in the partition that took place in

1961 and the properties obtained by him by virtue of the Release Deeds dated 03.04.1968 and 15.03.1976 to be the joint family properties were not correct. The above said pleading made by the 1st defendant in his written statement, will make it clear that he has not admitted the property to be undivided joint family property, so as to call upon him to lead evidence to prove division of the property. On the other hand, the very contention of the plaintiff that the suit properties are the joint family properties of the plaintiff and the defendants 1 to 4 has been denied and disputed by the revision petitioner herein/1st defendant. As such, the burden of proving the properties to be the joint family properties stands cast on the plaintiff, who is the 1st respondent in the revision petition. Unless and until she discharges her burden, there cannot be any shifting of the burden on the defendants, much less, on the 1st defendant to prove his case of defence.

6. The learned trial Judge, without advertent to the above said facts and mis-applying the principles of law, rendered an erroneous finding and thereby, directed the defendants to lead evidence in proof of their defence case, before ever the plaintiff would be called upon to prove her case. The said order of the learned trial Judge is shockingly erroneous, which will show a wrong exercise of the jurisdiction conferred on the trial Court, capable of being corrected by this Court in exercise of its power of superintendence over the subordinate Courts under Article 227 of the Constitution of India.

7. In the result, the revision succeeds and the same is allowed. The order

of the trial Court dated 23.09.2015, made in IA.No.567 of 2015 in OS.No.163 of 2012 on the file of the Principal Subordinate Judge, Erode is set aside. The 1st respondent herein/plaintiff shall lead evidence in proof of her case and only thereafter the defendants shall lead evidence. No costs. Consequently, the connected miscellaneous petition is closed.

19.02.2016

Index: Yes
Internet: yes
gya

To
The Principal Subordinate Judge,
Erode.

P.R.SHIVAKUMAR, J.

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