

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P.(PD).No.1037 of 2012
and
M.P.No.1 of 2012

1. K.Nandagopal

2.K.Paramasivam ... Petitioners

- Vs -

Gayathri ... Respondent

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India against the Order dated 02.02.2012 and made in I.A.SR.No. of 2012 in O.S.No.274 of 2010 on the file of the Principal Subordinate Judge, Salem.

For Petitioners : Mr.S.Saravana Kumar
For Respondent : Mr.T.M.Hariharan

ORDER

The order dated 02.02.2012 and made in the un numbered application in the suit in O.S.No.274 of 2010 on the file of the learned the Principal Subordinate Judge, Salem is under challenge in this revision.

2. The revision petitioners are the defendants in the suit whereas the respondent is the plaintiff.

3. Obviously the respondent herein had filed the above suit in O.S.No.274 of 2010 as against the revision petitioners and one Mr.K.Harinarayanan, the 3rd defendant and thereby sought the following reliefs:-

"(a) Permit the Plaintiff to sue in forma pauperies.

(b) Set aside the sales in favour of the 1st and 2nd Defendants and of the 2nd Defendant both Sales dated 02.01.1991 in respect of the Plaint B Schedule items I and II respectively.

(c) Pass a preliminary Decree dividing the plaint Schedule properties, allotting one half share to Plaintiff.

(d) Appointing a Commissioner to divide the Plaint 'B' Schedule properties by metes and bounds into 2 shares and allot one such specific share to Plaintiff.

(e) Direct the Defendants 1 and 2 or other agents, servants or successors etc., to put the Plaintiff in possession of her specific share.

(f) Direct the defendants 1 and 2 to pay mesne profits at the rate of Rs.1000.00 per month from 02.01.1991 onwards,

till Plaintiff is put in possession of her Specific Property.

(g) Granting such other and further reliefs as the Court deems fit and proper and render justice."

4. The suit was contested by the revision petitioners by filing their written statement. After formulating necessary issues, the trial was commenced on 2002 itself. Thereafter, it appears that on the failure of the revision petitioners, an exparte order was passed on 21.10.2002. Thereafter, the revision petitioners had filed an application in I.A.No.266 of 2002 for setting aside the exparte order dated 21.10.2002 which was allowed and thereafter, according to the respondent/plaintiff, the suit had been crossed several hearings and finally it was adjourned to 08.04.2004. On 08.04.2004, on the failure of the revision petitioners to make their presence before the trial court they were called absent and set exparte and in consequence there of an exparte decree came to be passed. Again, they had taken out an application in I.A.No.777 of 2004 for setting aside the exparte decree dated 08.04.2004. That petition was also allowed. Thereafter, it is revealed that the suit was adjourned for several hearings between 24.11.2004 to 20.09.2005. Then it was brought to the notice of trial Court that the revision petitioners had been taken steps to settle the dispute.

5. Once again the suit was decreed exparte on 20.09.2005 and

thereafter, the revision petitioner had taken out an application in I.A.No.1347 of 2005 to set aside the ex parte decree dated 20.09.2005. At this stage, the trial Court had proceeded to dismiss the application on 14.08.2007. Now, it is understood that based on the ex parte preliminary decree, a final decree application in I.A.No.336 of 2008 was filed on 27.02.2008. It is also submitted by learned counsel for the petitioners, that in the final decree application in I.A.No.336 of 2008 an Advocate Commissioner was appointed and he had also filed his report disclosing the feasibility of division of the property. As against the dismissal of the application in I.A.No.1347 of 2005 on 14.08.2007, the revision petitioner had filed a Civil Miscellaneous Appeal before this Court in C.M.A.No.3989 of 2008 which was also dismissed by this Court on 19.04.2010.

6. While dismissing the C.M.A.No.3989 of 2008, the learned Single Judge of this Court had observed in paragraph 9 of the judgment dated 19.04.2010 which is extracted as under:-

" 9. Considering the facts and circumstances of the case, findings of the Trial Court and arguments advanced by the learned counsel appearing on either side, this Court points out that the suit was set ex parte on 21.10.2002. Subsequently, it was set aside in I.A.No.266 of 2002, on 28.10.2002. Thereafter, once again, the suit was ex-parte on 08.04.2004. This Order also was set aside on 14.11.2004 in I.A.No.777 of 2004. Once

again, the suit was set-exparte on 20.09.2005. Against the ex-parte decree, the Appellants have filed I.A.No.1347 of 2005. The same was dismissed by the learned Trial Judge. So, this Court is of the view that the contents of the set aside application in I.A.No.266 of 2002 and I.A.No.777 of 2004 are identical. It clearly proves that the Defendants approach, by way of filing the set aside applications, have not been bonafide. Further, this Court, after scrutiny of the learned Trial Court Judge's order passed in I.A.No.1347 of 2005, dated 14.08.2007, find that there is no discrepancy in the said order. Further, the case has been posted for final decree proceedings. Further, the guardian of the Plaintiff is aged 70 years old and is a senior citizen. So, a speedy trial is required to ensure that the constitutional right of the Respondent is met."

7. Under this circumstance, the revision petitioners had come forward with an application under Order 7 Rule 11 of C.P.C., to get the plaint rejected on the simple ground that the respondent/plaintiff was born on 11.07.1990 and that she being the daughter is not entitled to any share in the joint family property under the provisions of Hindu Succession Act (30 of 1956). They have also contended that the respondent/plaintiff had claimed right over the said property under the provisions of Hindu Succession (Tamil Nadu Amendment) Act, 1 of 1980 which came into force on 21.03.1989. According to the revision

petitioners, a partition in respect of joint family property was effected between the father and grand father and others on 25.01.1989 (i.e.) prior to the commencement of Hindu Succession (Tamil Nadu Amendment) Act and therefore, this Act is not applicable to the partition which was effected before 25.03.1989.

8. It is significant to note here that this petition was not even numbered and rejected at the initial stage by the trial court on 02.02.2012. Challenging the correctness of this order, present revision is filed.

9. In the impugned order, the learned Trial Judge has observed that :

"The Petitioners/Defendants has come forward with the present Application for rejection of Plaint under Order 7 Rule 11 at the fag end of the Final Decree proceedings. Let it be noted that when called upon to exercise Jurisdiction to reject a Plaint under Order 7 Rule 11 C.P.C., the Court will take into consideration the Plaint and the Plaint alone. The challenge to the Plaint and its affirmation by the Petitioners/Defendants is to be kept apart because that would not be a ground for the rejection of Plaint. All the averments stated in the Petition could only be ground of defence to the suit. The Court cannot and shall not consider the defence on the Defendants for the purpose of rejecting the Plaint. A jurisdiction to dismiss the suit has to be distinguished from jurisdiction to reject the

Plaint. The mandatory provision contained in Rule 11 are intended for cases to see that vexatious litigation are not allowed to consume the time of the Court. Having reached the stage of final decree it is not open to the Petitioners/Defendants to raise the plea of cause of action at the fag end of the Final Decree proceedings. Hence, this petition is rejected."

10. This Court has struck a balance between the submissions made by the learned counsel for the petitioners and the learned counsel for the respondent. This Court has also perused the grounds of revision along with the impugned order.

11. As observed from the foregoing paragraphs, the final decree application in I.A.No.336 of 2008 is pending and the Commissioner had also filed his report suggesting the feasibility of division of the properties. Under this circumstance, interference of this Court does not require to exercise its revisional jurisdiction over the impugned order passed by the trial court.

12. In view of the above fact the revision petition is devoid of any merits and hence liable to be dismissed. Accordingly, this Civil Revision Petition is

T.MATHIVANAN, J.,

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 dismissed and the impugned order is confirmed. The learned Trial Judge is directed to proceed with the final decree application in I.A.No.336 of 2008, (now re-numbered as I.A.No.441 of 2010 in O.S.No.274 of 2010) and dispose of the same within short span of time preferably within a period of eight weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

16.11.2016

Index:Yes/No
 Internet:Yes/No
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To
 The Principal Subordinate Judge,
 Salem.

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 and
 M.P.No.1 of 2012

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