

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

C.R.P.(PD).No.3097 of 2013
& M.P.No.1 of 2013

L.Venugopal

... Petitioner

Vs.

1.V.Duraisamy Ammal
2.V.Gandhimathi
3.The District Collector
Vellore
4.The Tahsildhar, Ambur
5.The Sub Registrar
Ambur

... Respondents

Prayer:- Petition filed under Article 227 of the Constitution of India, against the fair order and decreetal order in I.A.No.218 of 2013 in O.S.No.27 of 2012 on the file of the Principal District Munsif Court, Ambur, Vellore District dated 16.7.2013.

For Petitioner : Mr.V.Raghavachari
For respondents : Mr.L.K.Manjunath for R1 & R2
No appearance for R3, R4 & R5

ORDER

The petitioner has come forward with the above Civil Revision Petition, challenging the impugned order in I.A.No.218 of 2013 in

O.S.No.27 of 2012 on the file of the Principal District Munsif Court, Ambur, Vellore District dated 16.7.2013.

2. The learned counsel appearing for the petitioner would submit that the respondents 1 and 2 as plaintiffs filed suit in O.S.No.27 of 2012 for the following reliefs:-

“(i) for declaration that the settlement cancellation deed dated 29.12.2011, document No.865/2012 of Ambur Sub-Registrar Office executed by the 1st defendant is null and void;

(ii) restraining the 1st defendant, by means of permanent injunction not to disturb peaceful possession and enjoyment of suit property by the plaintiffs and

(iii) restraining the 2nd to 4th defendant not to change the name of 1st plaintiff from the revenue records of patta pass book 145577 relating to suit property to any 3rd party.”

The defendant has filed Written Statement and contested the same. Thereafter, the 1st defendant filed I.A.No.218 of 2013 seeking an order for a direction to the 1st plaintiff to appear before the court in

order to ascertain the fact that she is an unsound mind person which is essential to determine the legality of the case, whether triable or not. After hearing both sides, the trial court has dismissed the said I.A., against which, the present Civil Revision Petition has been filed.

3. The learned counsel appearing for the revision petitioner/1st defendant would submit that as per Order XVI Rule 21 of Civil Procedure Code, the court is empowered to issue summons to a party to the suit to give evidence, therefore, the application filed under Section 151 of C.P.C., is maintainable. He further submitted that 1st plaintiff viz., V.Durasamiammal is a person with unsound mind and she is not a fit person to prosecute the case and hence, to find out whether she is a mentally fit person, her appearance before the court is essential to determine the legality of the case as to whether triable or not. According to the learned counsel, this aspect has not been considered by the trial court and dismissed the application in I.A.No.218 of 2013.

4. Learned counsel appearing for the revision petitioner would further submit that 1st defendant agreed to give property in lieu of

maintenance for the 1st plaintiff as per the Gift Settlement Deed on 03.09.2001 Document No.1930/2001 and handed over the possession of the property on the same day and as per the said document, the 1st defendant mentioned that till the life time of 1st plaintiff the property may be enjoyed and after her life time, the 2nd plaintiff will get the property as per vested interest and hence, on that basis, the trial court has dismissed the I.A.No.218 of 2013, however, it is to be noted that during the life time of the 1st plaintiff, 2nd plaintiff's right will not arise, and as such the aspect of verifying the mental fitness of 1st plaintiff is essential in this case. The learned counsel for the revision petitioner relied on the decision in the case of **V.K.Periasamy @ Perianna Gounder Vs. D.Rajan [2001(3) CTC 20]** to support the proposition that there may be situations where a party may be called upon by another to give evidence as the latter's witness. Hence, the learned counsel prayed for setting aside the order in I.A.No.218 of 2013.

5. Resisting the above submissions, the learned counsel appearing for R1 and R2 would submit that Gift Settlement Deed has been executed in the year 2001 and that deed has been cancelled in the year 2012. In the written statement, it has been

stated by 1st defendant that at the time of marriage, the 1st plaintiff was of unsound mind and by intervention of Panchayat, settlement deed has been executed, however, in the settlement deed, no averment has been made with regard to unsound mind of the 1st plaintiff and hence, the revision petitioner with a view to drag on the proceedings in the suit, has filed I.A.No.218 of 2013 before the trial court. He further submitted that the trial court has considered the fact that suit has been filed by the plaintiffs not in the capacity of mentally ill person. It is also submitted that the 1st defendant has not furnished any certificate/document to show that 1st plaintiff is mentally ill and taking treatment. The learned counsel for R1 and R2 relied on the decision reported in **1999-1-L.W..660 [Kaliaperumal Vs. Pankajavalli and 2 others]** and submitted that as per Order XVI Rule 21 of C.P.C., it is not open to the party to call upon the opposite party as a witness and thus prayed for dismissal of the Civil Revision Petition.

6. I have considered the rival submissions made on both sides and perused the typed set of papers.

7. The respondents 1 and 2 in the present Civil Revision Petition as plaintiffs filed suit in O.S.No.27 of 2012 for the following reliefs:-

(i) for declaration that the settlement cancellation deed dated 29.12.2011, document No.865/2012 of Ambur Sub-Registrar Office executed by the 1st defendant is null and void;

(ii) restraining the 1st defendant, by means of permanent injunction not to disturb peaceful possession and enjoyment of suit property by the plaintiffs and

(iii) restraining the 2nd to 4th defendant not to change the name of 1st plaintiff from the revenue records of patta pass book 145577 relating to suit property to any 3rd party.

As per the plaint averments, it is stated that the 1st plaintiff's husband and 2nd plaintiff's father is the 1st defendant. The 1st defendant married the 1st plaintiff on 15.02.1984 as per the Hindu Rights and Customs and due to their wedlock, the 2nd plaintiff was born on 11.05.1985 and the 1st defendant after return from service, settled at Ambur along with two wives Ranjani and Sudha and due to their relationship, they got 5 children. According to the plaintiffs, the 1st defendant deserted the plaintiffs. The 1st defendant agreed to give property in lieu of maintenance for the 1st plaintiff as per the

Gift Settlement Deed on 03.09.2001-Document No.1930/2001 and handed over the possession of the property on the same day and as per the said document, the 1st defendant mentioned that till the life time of 1st plaintiff the property may be enjoyed and after her life time, the 2nd plaintiff will get the property as per vested interest. However, on 28.12.2011, the settlement deed has been cancelled which was registered on 01.02.2012 and therefore, the suit has been filed for the above stated reliefs. In the written statement filed by the 1st defendant, it is stated that the 1st plaintiff is a mentally ill person and she is unable to prosecute the case and during the pendency of the suit, the 1st defendant filed I.A.No.218 of 2013 under Section 115 of C.P.C. Now this court has to decide the question as to whether Order 16 Rule 21 of C.P.C., could be applied to the case on hand. It is specifically mentioned that practice of calling the opposite party as a witness should not be countenanced as it is not in the interests of justice. The decision relied upon by the learned counsel for the revision petitioner in the case of **V.K.Periasamy @ Perianna Gounder Vs. D.Rajan [2001(3) CTC 20]**, cannot be applied to the case on hand as in the said decision itself, this court cited the decision reported in **1999 (1) L.W.660 [Kaliaperumal Vs. Pankajavalli and 2 others]** and in

paragraph, 11, it is held as under:-

“11. In Kaliaperumal Vs. Pankajavalli and 2 others, 1999 (1) L.W.660 the case before the court was a suit for partition. The petitioner was the plaintiff and the second defendant claimed that the suit titles were given to her on lease by the 1st defendant. An application was filed for permission to examine the 2nd defendant. This court held that he was not entitled to do so since the 2nd defendant is the contesting respondent and the petitioner wants to examine the opposite party as their witness.”

8. In the above said decision **[2001 (3) CTC 20]** (*cited supra*), it is also held that if there was a total bar on the right of a party to summon another party to give evidence as a witness, Order 16, Rule 21 will not find a place in the code. But, here in the case on hand, as already stated, in the application in I.A.218 of 2013, it was not stated that the purpose of appearance of 1st plaintiff to summon before the court to give evidence on behalf of the defence, but the 1st plaintiff is to summon before the court to ascertain whether she is mentally unsound person or mentally fit person to pursue the case. In such circumstances, the decision relied upon by the learned counsel for the revision petitioner **2001(3) CTC 20** (cited

supra) is not applicable to the facts of the present case.

9. As already stated, in the application in I.A.218/2013, the direction sought for to summon and appear the 1st plaintiff before the court was not for giving evidence but to find out the mental fitness of the 1st plaintiff and for such practice of calling the opposite party could not be entertained and hence, the trial court has rightly dismissed the said I.A. In view of the foregoing discussions, this court finds that the order passed in I.A.No.218 of 2013 is legally sustainable and in view of the absence of any document to support the averment in I.A.No.218 of 2013 that 1st plaintiff is mentally unsound person, the arguments put forth on the side of learned counsel for revision petitioner does not hold good. It is also pertinent to point out herein that the trial court has given a finding that 2nd plaintiff has vested right towards the enjoyment of property and in such circumstances, I am of the view that during the life time of the mother/1st plaintiff, she has every right to protect her interest and as such, 1st plaintiff filed suit in O.S.No.27 of 2012 to pursue her case.

10. As far as the contention of the revision petitioner that only to ascertain whether 1st plaintiff is a mentally sound person or not, a direction is sought for appearance of 1st plaintiff is concerned, the normal practice is seeking permission for appointment of guardian on behalf of the parties who were of unsound mind, but in the present case, except the averment in the written statement, no piece of paper or document is given to substantiate the said factor and such document has not been filed before the trial court or before this court and even in such circumstances of mentally unsound person having filed the suit, the revision petitioner has to invoke the procedure under Mental Health Act and hence, the application under Section 115 of C.P.C., to summon the 1st plaintiff before the trial court sans merit and this court do not find any reason to entertain the present revision petition.

In the result, this Civil Revision Petition is dismissed with costs of Rs.2000/- to the Chief Minister's Relief Fund. Consequently, connected MP is closed.

05.01.2016

Index:Yes/No
nvsri

To

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2. The District Collector. Vellore
3. The Tahsildhar, Ambur.
4. The Sub Registrar, Ambur

R.MALA,J.

nvsri

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