

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.4573 of 2013

and

M.P.No.1 of 2013

A.P.C.Krishnamoorthy

... Petitioner

vs.

1. Balan @ Balakrishnan
2. Perumalsamy Konar
3. Gopal
4. Balamani
5. Kanagammal @ Kanagam
6. Shanmugham @ Siva Shanmugham
7. Chinnadurai
8. Balamani
9. Mangai @ Mangayarkarasi
- 10.Palanisamy @ Palaniappan
- 11.Smt.Bagyammal
- 12.R.Ananthanarayan
- 13.A.Sridevi
- 14.Kaliammal
- 15.Arukkuty
- 16.The State of Tamilnadu,
Rep by the District Collector
Collectorate Compound,
Coimbatore 641 018

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 13.06.2013 made in I.A.No.1637 of 2012 in P.O.P.No.111 of 2010 on the file of the

Principal District Court, Coimbatore.

For Petitioner	: Ms.P.T.Asha for M/s.Sarvabhauman Associates
For Respondent-1	: Mr.L.Mouli
For Respondents-3,7 &10	: Mr.C.Deivasigamani
For Respondent-12	: Mr.A.G.Rajakumar
For Respondents -2,4 to 6 8,9,11,13 to 16	: No Appearance

ORDER

This revision petition has been preferred against the order of the learned Principal District Judge, Coimbatore dated 13.06.2013 made in I.A.No.1637 of 2012 in Pauper O.P.No.111 of 2010 pending on the file of the said Court.

2. The petitioner in the revision is the 11th respondent in the above said pauper O.P. The first respondent in the revision, namely, Balan @ Balakrishnan filed the said pauper O.P seeking permission of the Court to sue as an indigent person, for cancellation of a sale deed dated 04.12.2009 bearing document No.4808 of 2009 registered on the file of Vadavalli Sub Registrar Office, Coimbatore in the name of the revision petitioner / 11th respondent in the pauper O.P. and for cancellation of similar sale deed dated 04.12.2009 bearing document No.4809 of 2009 in the name of the 12th and 13th respondents in the

pauper O.P. in respect of the 1/6th share in those properties allegedly held by the first respondent herein/ petitioner in the pauper O.P / plaintiff, for partition and separate possession and for costs. The reliefs claimed therein were valued at Rs.45,60,000/- and the Court fee payable was worked out to Rs.1,55,250.50 paise.

3. Contending that the first respondent herein, who is the petitioner in the pauper O.P, did not have any other property and did not possess the funds to pay the required Court fee, the first respondent herein / petitioner in the pauper O.P prayed for permission of the trial Court to sue as an indigent person.

4. The said pauper O.P. is resisted by the respondents 2 to 10 in the revision and also by the petitioner in the revision. During the course of enquiry in the pauper O.P., after the evidence on the side of the first respondent herein / petitioner in the pauper O.P was over, evidence on the side of the respondents therein was adduced and in fact, the 6th respondent-Shanmugam @ Sivashanmugam was examined as RW-1. Thereafter, the revision petitioner, who is the 11th respondent in the pauper O.P., filed I.A.NO.1637 of 2012 to recall RW-1 so as to enable him to mark through him the certified copies of a judgment and decree passed by this Court in S.A.No.417 of 2007

based on a compromise between the parties thereto and also a certified copy of the compromise memo, as exhibits on his side to show that the first respondent herein / petitioner in the pauper O.P is not entitled to the permission sought by him to sue as an indigent person.

5. The learned trial Judge, after hearing the submissions made on both sides, came to the conclusion that the documents sought to be produced were not germane to the enquiry in the pauper O.P. to decide whether permission to sue as pauper can be granted or not and accordingly, dismissed the said application by the order, which is impugned in the present Civil Revision Petition.

6. Though the respondents 2, 4 to 9, 11 and 13 to 16 were served with notice, they have not chosen to enter appearance. Though their names have been printed in the cause list, there is no representation for them. The other respondents are represented by Counsel. The first respondent in the revision, who is the petitioner in the pauper O.P., is represented by Mr.L.Mouli, Advocate. The respondents 3,7 and 10 are represented by Mr.C.Deivasigamani, Advocate and the respondent 12 is represented by Mr.A.G.Prabhu Kumar, Advocate. The arguments advanced on behalf of the

contesting parties are heard. The certified copy of the impugned order and the copies of the pleadings and the other documents produced in the form of typed set of papers are also perused.

7. The revision petitioner being the 11th respondent in the pauper O.P., wanted to rely on a judgment pronounced by this Court and a decree granted by this Court based on a compromise in S.A.No.417 of 2007, as evidence to show that the first respondent herein / petitioner in the pauper O.P is not entitled to the permission to sue as an indigent person. For that purpose, he filed the said application I.A.No.1637 of 2012 to recall RW-1 so as to produce the certified copies of judgment, decree and compromise memo pertaining to S.A.No.417 of 2007 through such witness.

8. The first respondent/petitioner in the pauper O.P. alone shall have the locus standi to contest and contend that the revision petitioner / 11th respondent in the pauper O.P. shall not be entitled to recall RW-1 and introduce the said documents through such witness. Mr.L.Mouli, learned counsel for the first respondent submits that if at all the revision petitioner wants to produce the certified copies of the above said documents, it shall be open to him to mark it through himself, when he figures as a witness on his side and the attempt

made by him to mark the same through another, who was fully cross examined, should be negatived. In addition, learned counsel for the first respondent/petitioner in the pauper O.P would also contend that the compromise memo and the compromise decree passed in S.A.No.417 of 2007 are fraudulent and the same will not be binding on the first respondent / petitioner in the pauper O.P and that for the said reason also, the revision petitioner should not be permitted to produce those documents during the enquiry in the pauper O.P.

9. Apart from the said contention, the learned counsel for the first respondent, who is also supported by the learned counsel for the respondents 3,7 and 10 contends that the documents sought to be produced are not germane to the enquiry in the pauper O.P and that hence, the order of the trial Court dismissing the application filed by the revision petitioner cannot be said to be either erroneous or defective.

10. Per contra, it is the contention of Ms.P.T.Asha, learned counsel appearing for the revision petitioner that the assumption that the documents sought to be produced are not germane to the enquiry in the pauper O.P. or that it will enlarge the scope of the said enquiry is quite erroneous, for the simple reason that Order XXXIII Rule 7 C.P.C

refers to the scope of evidence to be adduced by the parties to the pauper O.P. For the sake of convenience, Rule 7 in entirety is reproduced hereunder.:-

"(1) On the day so fixed or as soon thereafter as may be convenient, the Court shall examine the witness (if any) produced by either party, and may examine the applicant or his agent, and shall make [a full record of their evidence]

[(1-A) The examination of the witnesses under sub-rule (1) be confined to the matters specified in clause (b), clause(c) and clause(e) of Rule 5 but the examination of the applicant or his agent may relate to any of the matters specified in Rule.5]

(2) The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any), taken by the Court [under Rule 6 or under this rule], the applicant is or is not subject to any of the prohibitions specified in Rule 5.

(3) The Court shall then either allow or refuse to allow the applicant to sue as an [indigent person].

Sub Clause (1-A) says that the examination of witnesses shall be confined to matters specified in clause (b), clause(c) and clause(e) of Rule 5, but the examination of the applicant may relate to any of the matters specified in Rule 5. Of course, the applicant in the pauper O.P was already examined. Hence, we are are not concerned with the latter part of Sub clause (1-A).

11. Learned counsel for the revision petitioner submits that the documents now sought to be produced squarely fall under clause(b) of Rule 5 under Order XXXIII of the code of civil procedure. It is also the submission of the learned counsel for the petitioner that since the compromise memo contains an acknowledgment of receipt of money, it will also fall under clause (c) of Rule 5 and that hence, the documents sought to be produced cannot be said to be not germane to the enquiry contemplated under Rule 7.

12. As an answer to the contention that the compromise decree obtained by this Court in the Second Appeal is fraudulent, the learned counsel for the revision petitioner submits that till date neither the first respondent nor any other person, who was a party to the compromise, has chosen to file any application to set aside the

compromise decree.

13. As rightly contended by the learned counsel for the revision petitioner, it cannot be assumed that the said documents and evidence touching those documents to bring their case within the ambit of sub clause (b) and (c) of Rule 5 under Order XXXIII would enlarge the scope of enquiry contemplated under Order XXXIII Rule 7 C.P.C. It is well within the scope of the enquiry contemplated therein. Therefore, the finding of the trial Court that the documents are not germane to the enquiry in the pauper O.P. and that the proposed evidence shall cross the boundaries of enquiry contemplated under Order XXXIII Rule 7 cannot be sustained. The said findings of the trial Court are to be interfered with and reversed.

14. So far as the other contention of the learned counsel for the first respondent / petitioner in the pauper O.P to the effect that the revision petitioner can produce the documents through himself figuring as a witness on his side or by examining some other person is concerned, though such possibility is there, since the petitioner was not a signatory to the compromise memo, his attempt to prove it through a signatory to the compromise memo cannot be found fault with. Hence, the prayer made by the revision petitioner to recall RW-1 for the purpose of proving the compromise memo and the judgment

and decree passed in S.A.No.417 of 2007 has got to be sustained. Since the trial Court has negatived the same, this Court does have no hesitation in interfering with the same and setting aside the order of the trial Court.

15. In the result, the revision succeeds and the same is allowed. The order of the trial Court dated 13.06.2013 made in I.A.No.1637 of 2012 in pauper O.P.No.111 of 2010 dismissing the said interlocutory application is hereby set aside. I.A.No.1637 of 2012 shall stand allowed. RW-1 shall be recalled for further examination. The Court below shall dispose of the pauper O.P. before the end of April 2016. No costs. Consequently, the connected miscellaneous petition is closed.

05.04.2016

Index: Yes/No

Internet: yes/No

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To

The Principal District Court,
Coimbatore.

P.R.SHIVAKUMAR.J

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