

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.395 of 2014
& M.P.No.1 of 2014

T.A.Bhanumathy

.. Petitioner

Vs.

1.T.R.Arumugham
2.R.Ganeshan
3.A.Arumugam

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 04.10.2013 made in I.A.No.755 of 2012 in O.S.No.12 of 2007 on the file of the III Additional Subordinate Judge, Coimbatore.

For Petitioner : Mr.T.R.Rajagopalan, Senior Counsel
for Ms.P.Veena

For Respondents : Mr.L.Mouli

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 04.10.2013 made in I.A.No.755 of 2012 in O.S.No.12 of 2007 on the file of the III Additional Subordinate Judge, Coimbatore.

2.The petitioner is 7th defendant and respondents are the plaintiffs in O.S.No.12 of 2007 on the file of the III Additional Subordinate Judge, Coimbatore. The respondents filed the said suit against the petitioner and other defendants for partition. Petitioner and other defendants filed written statement and are contesting the suit. Trial commenced. At that stage, the petitioner filed I.A.No.755 of 2012 under Order VII Rule 11 C.P.C for rejection of plaint on the ground that their ancestor Chittur Gounder, by Will dated 07.06.1922, bequeathed the property to his four daughters for life time and there after to their male issues. If there is no male issues to any one of the daughters, their share will go to male issues of other daughters. The respondents filed suit for partition stating that they are the sons of Amirtham, who is the daughter of Kamatchi and grand daughter of Chittur Gounder. As per the Will, they are the legal heirs of grand daughter and they do not have any right to file suit and cause of action mentioned in the plaint is illusory and in fact no cause of action has arisen for filing the suit.

3.The respondents filed counter affidavit and denied all the averments made by the petitioner and contended that interpretation of Will given by the petitioner is not correct. The first defendant

filed O.S.No.1049 of 1996 against the defendants 2 to 11 and obtained collusive decree without impleading all the sharers as the defendants, which is not binding on the respondents. The respondents are not parties to the said suit. The petitioner has to prove that as per the recital in the Will, the four daughters of Chittur Gounder/original owner of the suit property, have to enjoy the properties for their life time and vested remainder thereon are to be passed on to the male heirs of the daughters only. According to the respondents, as per the recital of the Will, the respective daughters shall enjoy the property allotted to them and after their lifetime, it shall go to the male heirs. There is also recital in the Will that in case of no male heirs to any one of his daughters, the property of the said daughter shall go to the male heirs of remaining daughters. The defendants 2 to 4 are the legal heirs of Dhanalakshmi, who is one of the daughters of Kamatchi, daughter of Chittur Gounder. The petitioner has not come to the Court with clean hands and she has suppressed the facts in filing the present application for rejection of plaint. Therefore, they prayed for dismissal of the application.

4.Before the learned Judge, no oral evidence was let in by both parties. The petitioner marked certified copy of the Will as Ex.P1 and respondents marked copy of the plaint in O.S.No.1049 of

1996 and final decree passed in O.S.No.1049 of 1996 as Exs.R1 and R2.

5.The learned Judge, considering the fact that the issue raised by the petitioner cannot be decided in the application filed under Order VII Rule 11 of C.P.C and that whether the respondents filed suit without cause of action, cannot be decided in the application filed for rejection of plaint, dismissed the application.

6.Against the said order dated 04.10.2013, made in I.A.No.755 of 2012 in O.S.No.12 of 2007, the present Civil Revision Petition is filed by the petitioner.

7.The learned Senior Counsel for the petitioner contended that the respondents have filed the suit for partition mainly based on the Will dated 07.06.1922 executed by Chittur Gounder. A reading of the recital of the Will clearly shows that the respondents have no right in the suit schedule property and there is no cause of action for them to file the suit. The cause of action alleged by the respondents is only illusory for the purpose of filing the suit. The learned Judge failed to consider paragraph-2 of the plaint, wherein, the respondents have stated that as per the Will, the female heirs of

daughters are not entitled to inherit. The learned Judge failed to see that the compromise decree between the defendants in different suit in O.S.No.1046 of 1996, cannot give any right or interest to the parties herein. In support of his contentions, the learned Senior counsel for the petitioner relied on the following judgments:

(i) (2004) 3 SCC 137 (Sopan Sukhdeo Sable and others Vs. Assistant Charity Commissioner and others);

(ii) (2003) 1 SCC 557 (Saleem Bhai and others Vs. State of Maharashtra and others);

(iii) 2011 (3) CTC 153 (N.Ravindran Vs. V.Ramachandran);

(iv) (1998) 7 SCC 184 (Raptakos Brett & Co. Ltd. Vs. Ganesh Property) and

(v) (1998) 2 SCC 70 (I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and others)

8.The learned counsel appearing for the respondents submitted that the respondents filed the suit for partition in the year 2007. The petitioners and other defendants filed written statement and are contesting the suit. When the suit was listed for trial, only to drag on the proceedings, the petitioner has come out with the present I.A in the year 2012 to defeat the interest of the

respondents. The first defendant in the present suit filed O.S.No.1049 of 1996 against defendants 2 to 11 for partition and obtained collusive and fraudulent decree in the said suit. In the said suit, the defendants 2 to 4, who are the legal heirs of Dhanalakshmi who is the daughter of Kamatchi are also party. The respondents are not party to the said suit and the said decree obtained by the first defendant is collusive in nature and the application filed after 5 years is not maintainable and prayed for dismissal of the Civil Revision Petition.

9.Heard learned Senior counsel for the petitioner as well as the learned counsel for respondents and perused the materials available on record and the judgments relied on by the learned Senior counsel for the petitioner.

10.The petitioner is seeking to reject the plaint on the ground that as per the Will of Chittur Gounder, after the life time of his four daughters, only male heirs of the four daughters are entitled to inherit the suit properties. The respondents being sons of daughter's daughter of Chittur Gounder, are not entitled to any share in the suit property. This issue can be decided only by interpretation of the provisions of the Will. In the application for rejection of plaint, this

issue cannot be decided. Whether the respondents who are the sons of daughter's daughter are entitled to any share in the suit properties can be decided only by appreciating all the evidence let in by the parties at the time of trial. The ground on which the petitioner is seeking for rejection of the plaint is not the ground as contemplated under Order VII Rule 11 C.P.C. For the above reasons, the order of the learned Judge does not warrant any interference by this Court and the Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

Index: Yes/No
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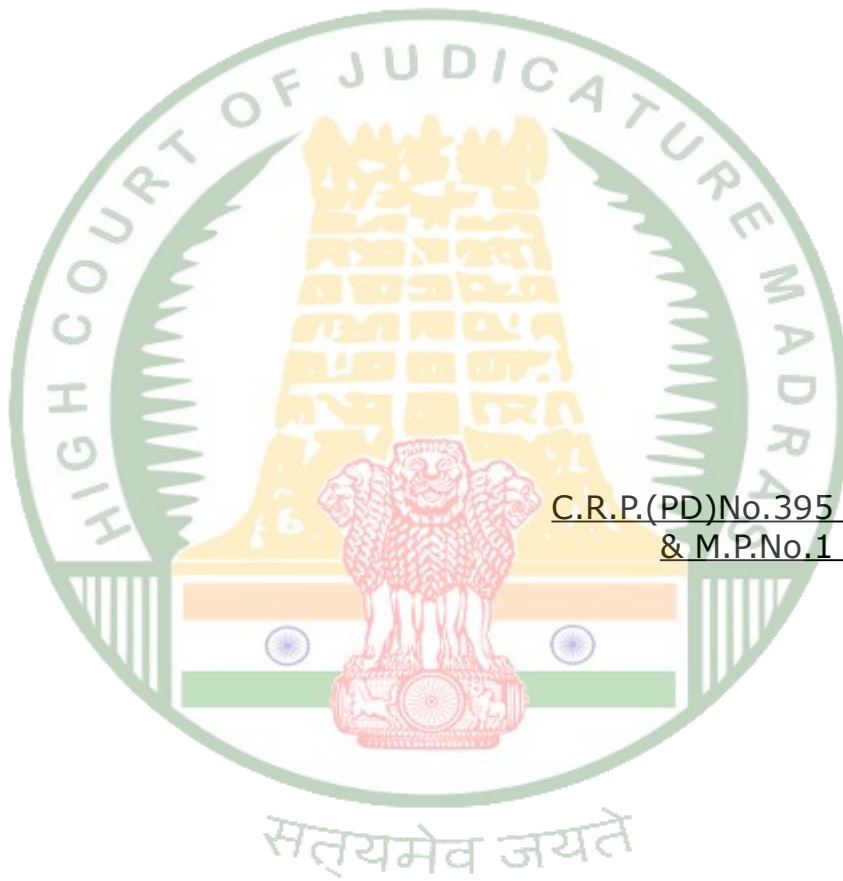
To

The III Additional Subordinate Judge,
Coimbatore.

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V.M.VELUMANI, J.

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