

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 20.12.2016

Pronounced on 31.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.3741 of 2011

and

M.P.No.1 of 2011

1.Arumugam (died)
2.A.Mani
3.V.A.Arunachalam
4.D.Parvatham

.. Petitioners

Vs.

1.T.N.Subramaniam (died)
2.S.Jegan @ S.Jagadeesan
3.Baby @ Thangamani
4.T.P.Saminathan
5.K.Natarajan
6.Pongiyammal
7.Manonmani
8.Rangasamy
9.Arunachalam (died)
10.A.Kannammal
11.A.Chandran
12.E.Kalaiselvi

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the fair and decreetal order of the learned Subordinate Judge, Perundurai dated 29.06.2011, made in I.A.No.253 of 2009 in O.S.No.472 of 2009.

For Petitioners : Mr.N.Naveen Kumar Murthi
for M/s.V.P.K.Gowthamarthikeyan

For Respondents : Mr.T.Murugamanickam (for R2)
Mr.A.K.Kumarasamy (for R8 and R11)
R1 and R9 – Died
No Appearance(for R3 to R7, R10, R12)

O R D E R

The present revision petition has been filed challenging the order passed by the I Additional Subordinate Judge, Erode, in I.A.No.253 of 2009 in O.S.No.308 of 1992, dated 29.06.2011.

2.Heard Mr.Naveen Kumar Murthi, learned counsel for Mr.V.P.K.Gowtham, learned counsel appearing for the revision petitioners, Mr.T.Murugamanickam, learned counsel appearing for the respondents 1 to 4 and Mr.A.K.Kumarasamy, learned counsel appearing for the respondents 8 and 11.

3.It could be seen that the suit was filed for partition and the same was contested by the predecessors in title of the revision petitioner and the respondents and the trial Court has decreed the

suit which later appears to also have confirmed by the appellate Court. When the matter stood thus, the respondents 1 to 4 have filed an Interim Application before the trial Court under Order 26 Rule 13 read with Section 151 of C.P.C. to pass a final decree by appointing an Advocate Commissioner to divide the suit properties.

4.The lower Court, after hearing the rival submissions of the parties, has directed that an Advocate Commissioner shall be appointed who shall measure and divide the properties in accordance with the preliminary decree. In the said order, it has been stated that the respondents in the said application have also agreed to divide the suit properties as per the preliminary decree. However, it could be seen that the 7th to 9th respondents in the said application, who are the revision petitioners herein have taken a stand that a compromise was entered on 13.08.2008 by all the parties before the well wishers of the family and the same was reduced into writing and attested by the mediators.

5.It is the contention of the learned counsel for the revision petitioner that the order of the lower Court does not in any manner take note of the contention of the revision petitioner that a compromise agreement was entered upon and the same shall be

binding upon the parties. It is the contention that once when an objection has been taken in the counter affidavit, the trial Court without applying its mind, has given a finding that all the parties have consented to divide the properties as per the preliminary decree. Hence, it is being prayed that the said order is unsustainable and ought to be set aside.

6.Per contra, the learned counsel appearing for the respondents in unison would contend that the purported compromise deed was never filed before the Court and the revision petitioners are only trying to protract and prolong the matter by projecting as if there was a compromise in the dispute between the parties.

7.According to the respondents, the trial Court has passed the said order only after taking into consideration the rival submissions of the parties and hence, the revision petitioner has no right to assail the order passed.

8.One fact that becomes clear upon a mere reading of the pleadings filed by the parties before the trial Court is that an objection has been categorically taken by the revision petitioners in their counter statement that a compromise deed has been entered

into and the same shall be binding upon all the parties. Despite the said objection being raised, the trial Judge has neither accepted nor denied the same. Further, no reasons are also given for not considering the said objection and the impugned order assailed in the instant revision petition also does not disclose that the trial Judge has applied his mind or given any reasoning for dislodging the objections raised by the revision petitioners.

9.It is trite in law that reason is the heartbeat of every judicial decision and it is the duty of the Courts to ensure that while adjudicating a controversy, it should make it clear to the parties whether the stand taken by them is accepted or not? This would in fact pave way for clarity in the issue and ultimately would help in attaining finality to the matter. Even in the instant case, had the trial Judge given a reason either accepting or denying the objections raised by the revision petitioner, the filing of the present revision petition itself would not have arisen.

10.Today, the pendency of cases has become a matter of huge concern for the bar, the bench and the litigant public. It is only through a concerted and a conscious effort from all stakeholders, can there be an effective and expeditious disposal of cases, especially

before Civil Courts. Hence, it is bounden duty on the part of the subordinate judges in ensuring that reasoning and application of mind is made evident in the orders passed by them. This would ensure that unwarranted and unnecessary applications or appeals over trivial issues can be curtailed.

11.In the light of the above said observations, this Court is of the categorical view that the impugned order that has been passed is liable to be interfered with and accordingly, the same is set aside.

12.In the result:

(a) this civil revision petition is allowed by setting aside the order passed in I.A.No.253 of 2009 in O.S.No.472 of 2009 dated 29.06.2011, on the file of the learned Subordinate Judge, Perundurai;

(b) the learned I Additional Subordinate Judge, Erode is hereby directed to decide the interim application in I.A.No.253 of 2009 for appointment of an Advocate Commissioner afresh by duly taking note of all objections of the parties including the compromise deed which is stated to have been executed.

(c) the learned Subordinate Judge, Perundurai is hereby directed to dispose the application within a period of one month from the date of receipt of a copy of the order by giving notice to both

parties.

13. Accordingly, this civil revision petition is allowed with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

31.01.2017

Index:Yes
Internet:Yes

vs

To

The Subordinate Court,
Perundurai.

M.V.MURALIDARAN, J.

VS

Pre-Delivery order made in
CRP(NPD)No.3741 of 2011
and
M.P.No.1 of 2011

31.01.2017

<http://www.judis.nic.in>