



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.2328 of 2014 (PD)
and

M.P(MD)No.1 of 2014

Mrs.Nasima Syed Ali

.. Petitioner/ Petitioner/
Plaintiff

Vs.

1.Peer Mohamedkamal ..1st Respondent/Petitioner/2nd Defendant
2.Mytheen Miran Lyala
3.Mohamed Shajahan
4.Mohamed Bazeer
5.Mohamed Nazar
6.Mohamed Jagaskeer ..Respondents 2 to 6/Respondents 2 to 6/
Defendants 1,3 to 6

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to call for the records relating to the fair and decreetal order passed in I.A.No.326 of 2011 in O.S.No.101 of 2010, dated 11.08.2014 on the file of the II Additional Subordinate Judge, Nagercoil and set aside the same.

For Petitioner : Mr.D.Saravanan
For R1 : Mr.Sree Kumaran Nair
For R3 : Mr.F.X.Eugene
For R2,R4 to R6 : No appearance

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decreetal order passed in I.A.No.326 of 2011 in O.S.No.101 of 2010, dated 11.08.2014 by the II Additional Subordinate Judge, Nagercoil.

2.The petitioner is the plaintiff. The respondent is the defendant. The petitioner filed suit in O.S.No.101 of 2010 before the Principal Sub Court, Nagercoil, for partition. The petitioner filed I.A.No.227 of 2011 for amendment of plaint with regard to ~~services~~ property. The said application was allowed on 13.09.2011 as no counter was filed by the respondent.



3.The first respondent/second defendant filed I.A.No.326 of 2011 to set aside the ex-parte order, dated 13.09.2011 allowing the amendment. According to the first respondent, petitioner by the undue influence and fraud obtained signature of the first respondent in the compromise memo when first respondent was in the influence of medicines. The Advocate clerk of petitioner also got signature of first respondent's Advocate showing the first respondent's signature. First respondent never agreed for any compromise. The petitioner filed I.A.No.227 of 2011 for amendment of the plaint schedule property. The said application was returned on various dates. Subsequently, the same was numbered on 07.09.2011 and posted for counter on 12.09.2011 and on 13.09.2011 allowed stating that the counter not filed. In the circumstances, the first respondent filed the present I.A.316 of 2011 to set aside the ex-parte order, dated 13.09.2011 passed in I.A.No.227 of 2011.

4.The petitioner filed counter affidavit and denied all the averments made in the affidavit. The petitioner contended that there was no undue influence played on the first respondent. There is no collusion between the parties and all the parties agreed for compromise. The respondent went through compromise and suggested certain allegations and appeared before the Court after consulting his Advocate. His Advocate, who is the senior member of the bar also went through the memo of compromise. The respondent only is playing fraud on the Court.

5.The learned Judge considering the averments made in the affidavit and counter affidavit and all the materials on record and after going through the order passed in I.A.No.227 of 2011 noted that no notice was served on the first respondent and other defendants in I.A.No.227 of 2011 and fact that no objection was not endorsed by the counsel for the respondent. In view of nature of amendment sought for, the learned Judge allowed the application to give opportunity to the first respondent to file counter and hear the matter on merits.

6.Against the said order, the petitioner has filed the present Civil Revision Petition.

7.The learned counsel for the petitioner reiterated the averments made in the counter in I.A., grounds of revision and submitted that the learned Judge erred in allowing the application permitting the petitioner to file counter and hear the petitioner. The learned Judge failed to see the first respondent and other defendants agreed to compromise and they are in possession of the property allotted to them as per compromise. First respondent also sold one of the property allotted to him in the compromise memo. There is no collusion between the parties and there is no undue influence on the first respondent as alleged by him. The learned



counsel for the petitioner also submitted that the present petition is filed only after 10 months of the order of the learned Judge dated 30.09.2011.

8. The learned counsel for the first respondent submitted that no notice was served on the first respondent in the I.A.No.227 of 2011 for amendment of the plaint schedule property and without his knowledge amendment was ordered. In view of this fact, the learned Judge has given an opportunity to the first respondent to file counter to disprove the application on merits.

9. Though notice was served on the respondents 2,4 to 6 and their names are printed in the cause list, they have not chosen to appear either in person or through pleader. I have heard the learned counsel appearing for the petitioner and the learned counsels appearing for the Respondents 1 and 3 and also perused the entire materials available on record.

10. The petitioner filed suit for partition. Subsequently, according to the petitioner at the interest of elders compromise was arrived at between the parties and memo of compromise was prepared and filed into Court. The petitioner filed I.A.No.227 of 2011 for amendment as certain other properties were also included in the memo of compromise. The said amendment application was ordered on 13.09.2011. The learned Judge from the materials on record came to the conclusion that no notice was served on the first respondent and other defendants, the said application was allowed without giving any opportunity to the first respondent and other respondents to file counter. In view of this fact, the learned Judge allowed the application to give opportunity to the first respondent to file counter and contest the matter on merits. In the circumstances, there is no illegality or irregularity warranting interference by this Court.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

12. The suit is of the year 2010. The learned Principal Sub Judge, Nagercoil is directed to dispose the suit in O.S.No.101 of 2010 as expeditiously as possible, in any event, not later than 31st July, 2017.

sd/-

Assistant Registrar (Records)

/True copy/

Sub Assistant Registrar



To

The II Additional Subordinate Judge, Nagercoil.

+1 cc to M/s.D.Saravanan, Advocate in SR.No.3974

+1 cc to M/s.K.Sreekumaran, Advocate in SR.No.3985

am

CSL/SV-MMS/16.02.2017 :4P/4C

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