



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.12.2017
(Reserved on 12.12.2017)

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CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (PD) (MD) No.2119 of 2017

S.Mani

... Revision Petitioner/Plaintiff

vs.

- 1) S. Adaikkan
- 2) S. Raman
- 3) S. Palaniappan
- 4) A. Subramanian
- 5) A. Selvaraj
- 6) Sornavalli
- 7) S. Santhi
- 8) D. Radha

... Respondents/Defendants

Petition filed under Article 227 of the Constitution of India, to direct the learned Principal District Judge, Pudukkottai, to number the plaint in Unnumbered O.S.SR.No.176 of 2017 which was returned on 17.08.2017 by allowing this Civil Revision Petition.

For Petitioner : Mr.D.Parisuthanathan

ORDER

This revision petition has been filed to direct the learned Principal District Judge, Pudukkottai, to number the plaint in Unnumbered O.S.SR.No.176 of 2017 which was returned on 17.08.2017.

2.The revision petitioner is plaintiff and respondents are defendants. The plaintiff filed the suit in O.S.SR.No.176 of 2017 for passing a preliminary decree by declaring that the plaintiff is entitled to 1/4th share over the suit properties and consequently pass a final decree by appointing a Court commissioner for dividing and allotting 1/4th share in favour of the plaintiff. The learned Judge returned the plaint stating that Section 16 CPC alone is applicable for the suit properties and Section 17 CPC is not applicable to the suit for partition. Therefore, the counsel resubmitted the plaint with the following endorsement:-

"The Section 16 empowers the plaintiff to file a suit where subject matter of the suit situate but never speaks about situation that the immovable properties situate within jurisdiction of different Courts. So the section 17 alone applicable to the suit seeking any relief in



respect of immovable properties situate within the jurisdiction of different courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the suit property is situate.

Here if the reason aforesaid for return of plaint is accepted, the plaintiff has to file a two suits (i.e.,) one in respect of immovable properties situated in Pudukottai District and another in respect of immovable properties situated in Sivagangai District, for getting same relief of partition and there is a change for multiplicity of suit, ended with two different results.

So in order to avoid those consequences, plaintiffs chosen to file a suit for partition before this Hon'ble Court where entire 'A' schedule properties situated. Further the Azhiyanilai village in Aranthangi Taluk of Pudukottai District where 'A' schedule properties situated and Kandanoor, Melamagudi in Karaikudi Taluk of Sivagangai District where the other 'B', 'C' 'D' schedule of properties situated geographically adjacent.

Further, in case the plaintiff chosen to file this suit before Sivagangai District Court, it is more difficulty for the plaintiff as well as defendants who are residing Pudukottai and Azhiyanilai in Pudukottai District and Kandanoor village in Sivagangai District for conducting case by travelling more than 100 km.

So, the suit is filed before this honourable Court and the same may be ordered to take on file and thus render justice.'

3. Thereafter, when the Court below asked the counsel to produce any authority about the maintainability of the suit, the counsel produced the judgment in Prem Kumar and another vs. Dharmam Pal Sehgal and others reported in AIR 1972 Delhi 91, for maintainability. But the Court below returned the plaint on 17.08.2017 stating as follows:-

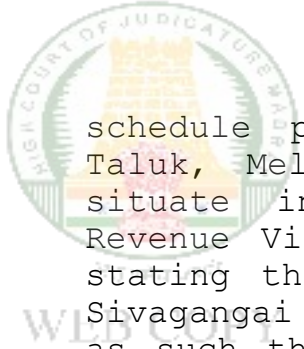
'Except AIR 1972 Del. Page 90, plaintiff not produced any recent authorities about maintainability of the suit.

As per Section 16 of CPC, in a suit for partition relief could be claimed only with regard to the immovable properties situated in local limits of jurisdiction of this Court.

Hence, with regard to immovable properties situated in Sivagangai District, the plaint as such is not maintainable in law.

Previous returns are also not complied. Hence, plaint returned.'

4. Perusal of the plaint shows that 'A' schedule property is situate in Pudukottai District, Aranthangi Taluk, Kondugi and Azhiyanilai Revenue Village. 'B' schedule property is situate in Sivagangai District, Karaikudi Taluk, Kandanur Revenue Village. 'C'



schedule property is situate in Sivagangai District, Karaikudi Taluk, Melamanagudi Revenue Village. 'D' schedule property is situate in Sivagangai District, Karaikudi Taluk, Melamanagudi Revenue Village. Therefore, the Court below returned the plaint stating that with regard to the immovable properties situated in Sivagangai District, the Court at Pudukottai, has no jurisdiction, as such the suit claiming relief in respect of the properties at Sivagangai, is not maintainable.

5. In my considered opinion, the Court below is not correct in returning the plaint stating that Section 17 CPC is not applicable to the suit for partition in view of the judgment in *Shri Ashok Rekhi vs. Smt Chandra Bhasin and others* (CS(OS)2192/2006 dated 06.04.2015 wherein, the Delhi High Court referred to the judgment in *Bishamber Dayal vs. Ram Pershad etc* reported in (1981) ILR Delhi 272, in which, it has been held as follows:-

'There is no dispute that the properties situated in village Subhana, District Rohtak, are joint Hindu Family properties of the parties. They are liable to be partitioned in equal share between them. In view of the provisions contained in section 17 of the Code of Civil Procedure, this Court has jurisdiction to grant relief with regard to these properties as well. It is clearly envisaged that where a suit is to obtain relief respecting, immovable property situate within the jurisdiction of different Courts, the suit can be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate.'

6. Ultimately, the Delhi High Court in *Shri Ashok Rekhi's* case held that Delhi District Courts would be able to deal with properties situated outside Delhi after invoking Sections 16, 17 and 20 of CPC, yet Delhi High Court would not be able to do so. It has been further held that different courts dealing with a claim for partition with regard to shares of the same parties may reach a different conclusion with regard to properties owned by same ancestor.

7. In the light of the said judgments, the learned Principal District Judge, Pudukkottai, to number the plaint in Unnumbered O.S.SR.No.176 of 2017 and proceed with the suit in accordance with law.

This Civil Revision Petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar (CSI)

/True Copy/

Sub-Assistant Registrar



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The Principal District Judge,
Pudukkottai.

Copy to:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai

+One cc to Mr.D.Parisuthanathan, Advocate, SR.No.93548

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RL/4C/4P/KKR/SAR1/8/1/2018

Order made in
CRP(PD) (MD) No.2119 of 2017

19/12/2017