

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.11.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD)No.203 of 2010

1.Panneerselvam

2.Sundarambal

... Petitioners /
Defendants 1 & 2

/vs/

1.Hameedunnissa
W/o. Ahamed Maraicair
Irusappan Street,
Cuddalore O.T.
rep. By her Power Agent,
A.G.Syed Mohideen
No.36 Sonagar Street,
Cudalore O.T.

... 1st respondent /
Plaintiff

2.Arumugam Alias Settu
S/o. Adimoolam.

3.Thilgavathi
W/o. Arumugam

4.Venkatesan S/o. Perumal

5.Ranganathan S/o. Perumal

6.Amirthalingam S/o. Rasakannu.

... RR 2 to 6 /
Defendants 3 to 7

PRAYER: Civil Revision Petition filed under Article 227 of constitution of India, against the Fair and Decreetal orders of the

Learned District Munsif, Cuddalore made in I.A.No.184 of 2008 in O.S.No.660 of 2007 dated 4.11.2009.

For Petitioner : Ms.G.Sumitra

For Respondents : No Appearance for R1 & R4
Mr.V.P.K.Gowtham
for R2, R3, R5 and R6.

ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned Additional District Munsif, Cuddalore in I.A.No.184 of 2008 in O.S.No.660/2007, in and by which, the learned Judge has dismissed the application filed by the revision petitioner for rejecting the plaint on the ground that the said suit does not reflect a cause of action.

2. The facts in brief are as follows:

The first respondent herein has filed a suit in O.S.No.660 of 2007 as an interpleader suit in which the relief sought for is as follows:

"The plaintiffs therefore pray that the Court be so pleased as to pass a decree adjudicating the title to the suit properties and for costs of the suit and grant plaintiffs such further and other reliefs as to this Court may seem fit and proper in the circumstances of the case."

3. The basis upon which the first respondent has filed the suit is that the suit properties were given to her by her mother at the time of her marriage and besides herself, there were two other children viz., Rahmadunnisa and Mehrunnissa, and all the three of them were the children of Abdul Gani Maraicair and Hammedunnissa. According to the first respondent, the father had made an arrangement in and by which, he had allotted these properties in the following manner: Survey No.415/1 measuring 2.97 acres and Survey No.419/1B measuring 2.03 acres was allotted to the first respondent. The land in Survey No.419/1A measuring 4.92 acres was allotted to the share of Ramudunnisa, and the land in Survey No.415/2 measuring 5.00 acres was allotted to Mehrunnissa.

4. The plaint further states that when the first respondent wanted to sell the properties, the second respondent herein who is the third defendant in the suit had offered to help her. In this regard and on his instance, the first respondent had executed two sale deeds in favour of the 4th respondent herein, who is the wife of the 3rd respondent, and one sale deed in favour of the respondents 4 and 5 herein, and one in favour of the sixth respondent herein. The sale was executed with reference to Survey Nos.415/2 and 415/1 and the area of land in Survey No.415/2 is 5 acres and the

area of the land in Survey No.415/1 is 2.97 acres and the 3rd respondent has deliberately included S.No.415/2 which did not belong to the plaintiff and these lands belonged to the first respondent's/plaintiff's sister Mehrunnissa.

5. It is seen that Mehrunnissa thereafter filed a suit in O.S.No.169/2000 on the file of the learned District Munsif, Cuddalore, for declaration to declare her absolute right and interest over Survey No.415/2. In the said suit, Mehrunnissa has contended that what the first respondent/plaintiff has conveyed was an extent of 2.97 acres in Survey.No.415/1 and 2.03 acres in Survey No.419/1B, and the said suit in O.S.No.169 of 2000 was dismissed and an appeal was filed by the said Hameedunnissa. The appeal was allowed and the Judgement and decree made in the suit was reversed.

6. The 1st respondent would further submit that the revision petitioners had no title and interest in the suit properties and without having any right over the same, they have executed a sale deed in respect of the suit property of the item No. 2 in favour of one Vijayakumar, who is the son of the second petitioner/2nd defendant herein and the younger brother of 1st petitioner/1st defendant. This deed, according to the first respondent/plaintiff is fraudulent one and would not clothe the revision petitioners without

any right over the property.

7. Thereafter, the first respondent/plaintiff would submit that she has requested respondents 2 to 6 herein, to handover possession of lands comprised in Survey No.415/2, of her sister, Mehrunnissa, which they refused, stating that they would do so only if their title with reference to the suit, (second item of properties) namely Survey No. 419/1B was declared. This according to the plaintiff made her to file the interpleader suit.

8. The revision petitioners had filed their written statement, denying the contention raised by the first respondent/plaintiff in plaint and stating that the interpleader suit was not maintainable, as the suit which has been filed by the first respondent/plaintiff is not in the nature of an interpleader suit. The revision petitioners had claimed that they have no binding upon the suit filed by one Mehruneesa in respect of her property and also stated that they have no quarrel with reference to the suit 1st item of property. Along with the written statement, the revision petitioners had filed an interlocutory application in IA.No.184 of 2008, to reject the plaint on the ground that the suit filed is not one which comes under the category of interpleader suit.

9. The first respondent/plaintiff had filed a counter in the said

interlocutory application denying the statement made by the revision petitioners and contended that the issue as to the character of the suit is a matter to be decided after the evidence is let in. The Additional District Judge, Cuddalore, proceeded to dismiss the said application, stating that the plaint cannot be rejected at this stage, since the plaint disclosed the cause of action. Aggrieved by the said order, the revision petitioners are before this court.

10. Heard, Ms.G.Sumitra, the learned counsel appearing for the petitioners. She would argue that the very reading of the pleading with Section 88 and Order 35 of the Civil Procedure Code would clearly demonstrate that the suit by no set of imagination can be considered to be an interpleader suit. She would also rely on the judgement of a Division Bench of this Court reported in **2003 [2] CTC 75 [South East Asia Marine Engineering & Construction Limited, 6 Waterloo Street, 1 Floor, Calcutta Vs. M/s.Oil and Natural Gas Corpn., Ltd., rep.by its Group General Manager, Regional Office, No.8m Gandhi Irwin Road, Egmore, Chennai-8 and another]** and would draw the attention of this Court to paragraphs No. 23 and 26.

"23. If at all the appellant can claim compensation it can be only under Section 65 of the Indian Contract Act, which reads as follows:

"65.Obligation of person who has received advantage under void agreement, or contract that becomes void. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it."

According to the said provision, for the work done on the basis of the agreement between the appellant and the 2nd respondent, the appellant has to claim compensation only against the 2nd respondent, as the said contract between them had become unenforceable as against the 1st respondent, as the assignment in favour of the appellant was not approved by the 1st respondent. As a matter of fact, till filing of the suit before the Civil Judge, Dehradun in Suit No.306 of 1991, the plaint of which is marked as Ex.D3 dated 10.5.1991, the appellant made claim only against the 2nd respondent. For the first time, the said claim was made against the first respondent also in the said suit. So, the appellant cannot sustain the suit against the 1st respondent independently.

.....

26.Black's Law Dictionary defines "interpleader" as follows:-

"Interpleader". An equitable proceeding to determine the rights of rival claimants to property held by a third

person having no interest therein. **Balish V. Parnham**,⁸² Nev.133, 546 P.2d 1297,1299. When two or more persons claim the same thing (or found) of a third, and he, laying no claim to it himself, is ignorant which of them has a right to it, and fears he may be prejudiced by their proceeding against him to recover it, he may join such claimants as defendant's and require them to interplead their claims so that he may not be exposed to double or multiple liability. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counter claim. Interpleader in Federal Interpleader Act, 28 U.S.C.A. § 1335, and Fed.R.Civil P.22. Similar statutes and Court rules govern interpleader in state Courts."

11.The Court had also perused the materials placed before it. As regards the discussion as to the merits of the revision, it is necessary to extract section 88 of the Code of Civil Procedure and Order 35 which would deal with the procedure as well as the contents of the plaint, in an interpleader suit. Order 35 Rule (1) read as follows.

"88.Where interpleader suit may be reinstituted-Where two or more persons claim

adversely to one another the same debts, sum of money or other property, movable or immovable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself: Provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted.

1. Plaint in interpleader -suit- In every suit of interpleader the plaintiff shall, in addition to the other statements necessary for plaints, state-

(a) that the plaintiff claims no interest in the subject-matter in dispute other than for charges or costs;

(b) the claims made by the defendants severally; and

(c) that there is no collusion between the plaintiff and any of the defendants."

12. Therefore from the reading of the above provisions, it is clear that what is contemplated as an interpleader suit is one where two different persons make a claim, with reference to the same subject matter, money or debt against a third party and others. Third party who accepts the claim, but has a confusion with reference to the persons to whom the property or the money or the debts has to be given, can move this court by way of interpleader suit, to clarify his confusion and discharge himself of the liability towards the said subject matter or debts or money.

13. If the facts of the present case is taken note of, it is not a case where the revision petitioners and defendants 3 to 7 / respondents 2 to 6 are making a claim on the first respondent/plaintiff in respect of the lands comprised in Survey No.419/1B, measuring 2.03 acres. On the contrary, the revision petitioners obtained a separate and independent right, totally distinguished to the right claimed by the first respondent. Therefore, the facts of the case would not come within the provisions of Section 88. Further, a reading of Order 35 Rule (1), would indicate that the plaint in an interpleader suit should not be one where there is a collusion between the plaintiff and any of the defendants. A reading of this plaint in the instant suit would indicate collusion between respondents 2 to 6 who are defendants 3

to 7 in the suit and the first respondent/plaintiff. The learned District Munsif Judge, Cuddalore, has not rightly understood the impact or the conditions which are necessary for instituting an interpleader suit.

14. In paragraph 26 of the judgement reported in 2003 [2] CTC 75 [cited supra], the definition of an interpleader has been dealt with and that the provisions covering the interpleader suit are in Section 88 and Order 35 [1]. The provisions of Order 7 Rule 11, clearly indicates that a suit/ plaint which does not disclose of the cause of action, shall be rejected.

15. In the case of hand, it is seen that the claim of the revision petitioners is independent of the first respondent/plaintiff whereas respondents 2 to 6 claim under the plaintiff. From the facts, it is clearly evident that the first respondent does not have a cause of action for instituting an interpleader suit and her remedy is only is to file a separate suit for declaration, particularly when the revision petitioners had denied the right and title and interest of the suit second item property. The order passed by the learned District Munsif Cuddalore suffers from infirmity and therefore liable to be set aside.

16. In the result the revision petition is allowed. The suit in O.S.No.660/2007 on the file of the Additional District Munsif Cuddalore stands restored.

02.11.2018

jrs/mpa

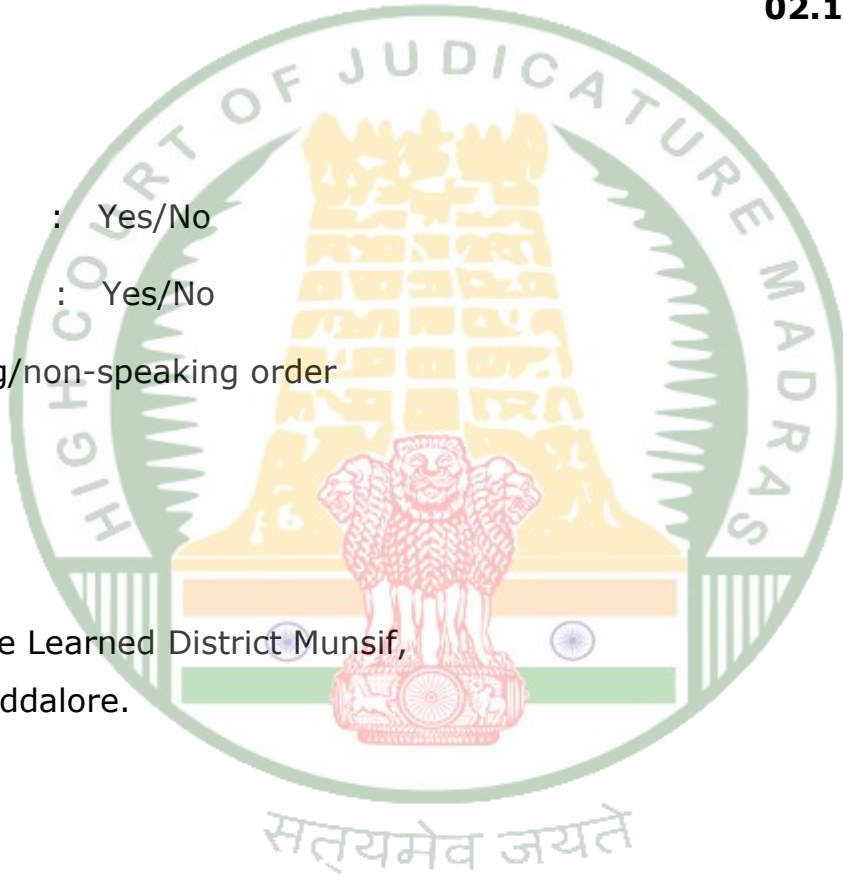
Index : Yes/No

internet : Yes/No

Speaking/non-speaking order

To

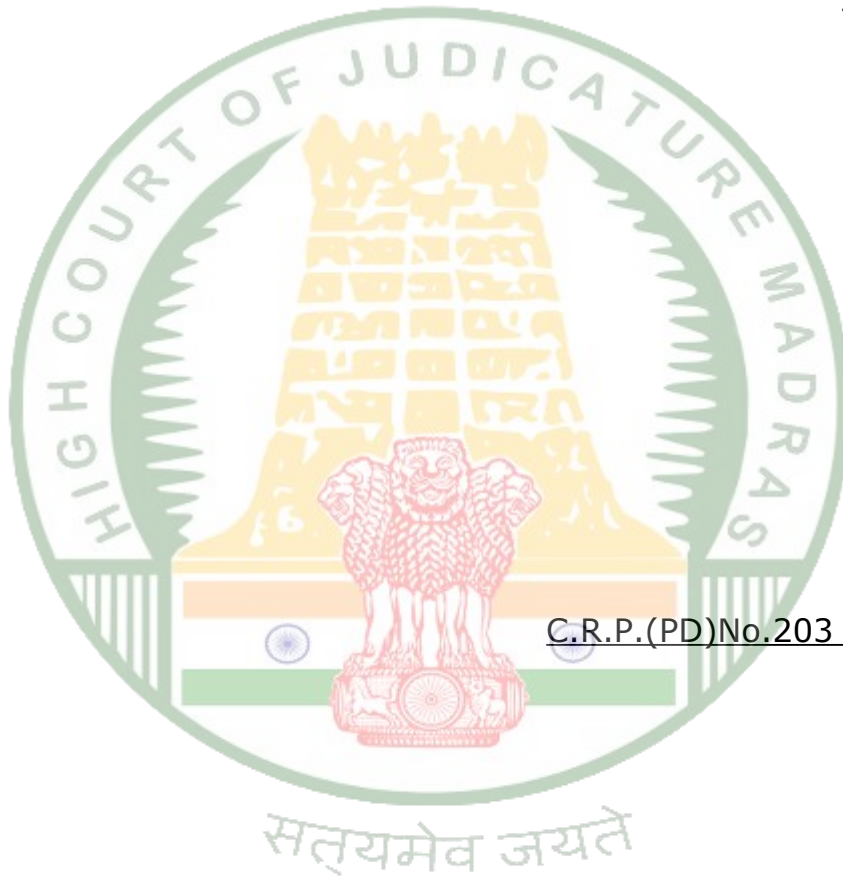
1. The Learned District Munsif,
Cuddalore.



WEB COPY

P.T. ASHA.,J.,

jrs/mpa



C.R.P.(PD)No.203 of 2010

WEB COPY

02.11.2018