

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.07.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(NPD)No.4377 of 2017

Vimala

... Petitioner

Vs.

1.Latha

2.Nirmal Arunkumar

3.Indhuja

4. Villupuram Town Co.operative

Urban Bank, rep.by its General Manager,
Thiru Vi Ka Road, Villupuram.

5. Villupuram District Central Co.Operative Bank,

Rep.by its General Manager,
Chennai Main Road, Villupuram.

6. Pondy State Co.Operative Bank Ltd.,

Rep.by its Secretary, Busy Street,
Chinnakadaai, Pondicherry.

7. Karur Vysya Bank,

Villupuram, Rep.by its Branch Manager,
P.J.N. Road, Villupuram.

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the order in I.A.No.456/2015 in I.A.No.220/2006 in O.S.No.19/2004 dated 17.02.2017 on the file of the learned Principal District Court, Villupuram.

For Petitioner : Ms.Kavitha Deenadayalan

For Respondents 1 to 3 : Mr.S.Kaithamalai Kumaran

For Respondent 4 : Mr.R.Arumugam

For Respondents 5 to 7 : No Appearance

ORDER

The respondents 1 to 3 herein are the plaintiffs in O.S.No.19/2004 which was filed for partition and separate possession of the suit property. The first respondent is the wife of the deceased Sivakumar and the respondents 2 and 3 are the children born to the first respondent and the deceased Sivakumar. The petitioner herein is the in-laws of the first respondent and grand parent of the 2nd and 3rd respondents.

2.According to the respondents 1 to 3, the suit properties are joint family properties, to which, the husband of the first respondent and father of the 2nd and 3rd respondents, the deceased Sivakumar have contributed for the development of the suit properties and he is entitle to a share in the suit property. The father of the deceased Sivakumar filed written statement contending that the suit properties are self acquired properties. The Trial Court passed a

decree for partition on 22.06.2005 in respect of certain items in schedule A and B of the plaint schedule.

3. Aggrieved by the same, the revision petitioner herein and husband of the revision petitioner filed an appeal in A.S.No.2/2012 before this Court. Pending appeal, the second respondent has filed application in I.A.No.220/2006 praying to pass a final decree. Thereafter, respondents 1 to 3 have also filed application in I.A.No.455/2015 for impleading the respondents 4 to 7 herein as necessary parties to the application in I.A.No.220/2006 by stating that the husband of the revision petitioner herein/first defendant in the suit died on 12.08.2015 and during his life time, he had deposited various amounts and also operated various locker facility with the proposed party. As the revision petitioner herein attempts to withdraw the amount deposited with the banks application in I.A.No.455/2015 has been filed for impleading the proposed parties. The trial Court dismissed the application in I.A.No.455/2015, on the ground the proposed parties were not made as parties to the suit and therefore at the final decree stage they can not be impleaded.

4. Apart from that respondents 1 to 3 have filed an application in I.A.No.456/2015 in I.A.No.220/2016 under Order 39 Rule 1 and 2 of CPC for interim injunction restraining the respondents 4 to 7 herein from permitting the revision petitioner herein from operating the locker facilities with them and also from disbursing any amount to the first respondent for the revision petitioner herein in respect of fixed deposit and saving accounts maintained by the deceased Kumarasamy Reddiar husband of the revision petitioner herein and father of the said deceased Sivakumar with them.

5. The trial Court after hearing the arguments and granting the ad-interim injunction against the respondents 4, 5 and 7 and dismissed the application as against 6th respondent herein.

6. Feeling aggrieved against the order passed by the trial Court, the first respondent therein filed the present revision.

7. Heard both sides and perused the materials available on record.

8.The learned counsel for the revision petitioner would submit that though the respondents 1 to 3 have filed the suit in O.S.No.19/2014 against the preliminary decree, they have filed the appeal before this Court and the same is pending. The respondents 1 to 3 have filed the application in I.A.No.220/2006 for passing of final decree. During the pendency of the appeal, the husband of the revision petitioner died and in the final decree application, the respondents 1 to 3 filed application in I.A.No.455/2015 to implead the respondents 4 to 7 which was dismissed by the trial Court. Against which they have challenged the revision before this Court and same is pending.

9.Further, they would submit that husband of the revision petitioner filed the written statement in the suit properties are self-acquired property of them. In which they have not included the suit scheduled mentioned properties, in this application that is regarding the deposit made by the revision petitioner and her husband with the respondents 4 to 7 and the respondents 4 to 7 are not parties in the suit and the amount deposited in the bank is only on either or surveyor. Though the husband of the revision petitioner died, as per

law, the survivor is entitled for operation of the accounts. Therefore, no injunction can be granted against the true owner or co-owner. Therefore, after the death of husband of the revision petitioner, this revision petitioner is entitled to operate the account and also she is the owner of the properties. Therefore, the application filed to restrain the respondents 4 to 7 restraining them from permitting the revision petitioner to operate the account is not maintainable. The trial Court failed to consider the legal position granted order of an injunction against the respondents 4, 5 and 7.

10. The learned counsel for the 6th respondent would submit that the account opened by Kumarasamy Reddier was in the joint name who is wife, the revision petitioner before and after the death of Kumarasamy Reddier, the revision petitioner produced death certificate and also has filed the affidavit that they lost all the original papers, the deposit receipt as per the law in either or survivor account, any one of the person died, the survivor is entitled to operate the account. Therefore, she was permitted to operate the account and also broke open the safety locker and the amount which was alone on the either or survivor has already been transferred to the revision petitioner i.e., survivor accounts. Therefore, the trial Court also

considered this aspects and dismissed the application as against the 6th respondent. Therefore, there is no perversity in the order passed by the trial Judge.

11.The learned counsel for the respondents 1 to 3 would submit that even though the revision petitioner and her husband Kumarasamy Reddiyar took a defence that the property is self-acquired property of them. With reference to some of the properties, preliminary decree was passed, now final decree proceeding is pending. The first respondent and Kumarasamy Reddiar while he was alive filed appeal against the preliminary decree which is pending. At this stage when the Kumarasamy Reddiar died as an legal heirs of his son Sivakumar after his death, the respondents 1 to 3 are entitled to share and maintain the accounts lying before the respondents 4 to 7.

12.During the pendency of the legal proceedings, if the revision petitioner is permitted to withdraw and operate the accounts in case they would get the decree in their favour, the respondent would be put into prejudice. Therefore, they filed the application under Order 39 Rule 1 CPC. Restraining the respondents 4 to 7 from permitting the revision petitioner to operate the accounts. Even

though the petition against the 6th respondent to transfer the amount from either or survivor account to the revision petitioner, the respondents have not challenged against that order. However, the revision petitioner has challenged the order passed by the trial Court restraining the respondents 4, 5 and 7 from permitting the revision petitioner to operate the accounts. There is no perversity in the order passed by the trial Court. Therefore, it does not requires any interference and the revision is liable to be dismissed.

13. It is not in dispute that the first respondent is the daughter-in-law of the revision petitioner and 2nd the 3rd respondents are the parental grand daughter and son of the revision petitioner and also it is not in dispute that the respondents 1 to 3 filed the suit against the revision petitioner and her husband in which preliminary decree was passed and the revision petitioner and her husband filed an appeal against the passing of preliminary decree before this Court. While the appeal is pending, the husband of the revision petitioner died and the respondents 1 to 3 have also filed the application for passing of final decree and now the same is pending. During the pendency of the final decree application, since the husband of the revision petitioner died and the petitioner is operating the accounts. Therefore,

the respondents 1 to 3 filed the application in I.A.No.456/2015 restraining the respondents 4 to 7 from permitting the revision petitioner to operate those accounts. The respondents 4 to 7 have categorically admitted that the account maintained before the said respondents were either or survivor, once the civil suit is pending persons having the joint account, one of the account holders died the other joint account holder/ survivor can operate the accounts, when there is no dispute. When the respondents 1 to 3 have stated that they are also entitled to get share in the said properties when Kumarasamy Reddiar died intestate. Therefore, during the pendency of the final decree application and the appeal, while the rights of the parties are in dispute, the survivor cannot take away the entire estate of the deceased person. Rights of the parties are to be decided in the suit or appeal. Though the respondents 4 to 7 are not parties to the suit, admittedly, they have accounts of Kumarasamy Reddiar and having transaction with the respondents 4 to 7, till the disposal of the suit, they can be restrained from permitting the petitioner herein to be parted with the properties or deposits available with the respondents 4 to 7, the trial Court has elaborately discussed with the legal proposition about the rights and liabilities of the survivor and therefore, there is no perversity in the order, this Court does not find

any infirmity in the order passed by the trial Court. Since there is no perversity in the order passed by the trial Court, the revision petition is liable to be dismissed and accordingly, the same is dismissed. However, parties are at liberty to take their respective defence in the final decree proceedings and also in the appeal which is pending before this Court and the trial Court. No costs.

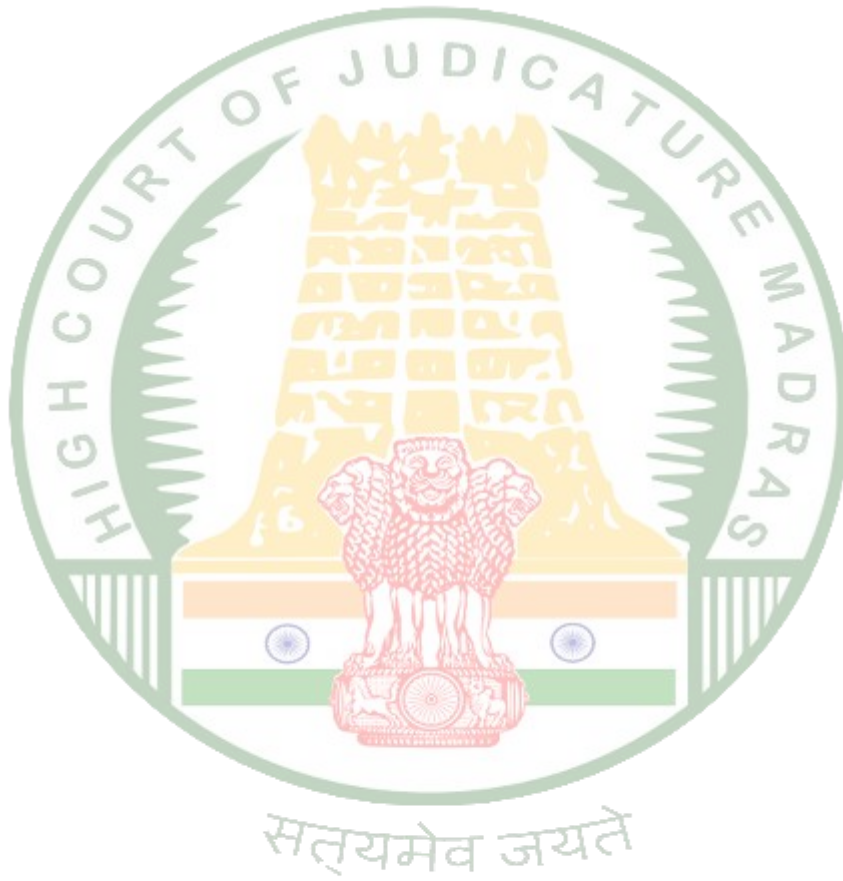
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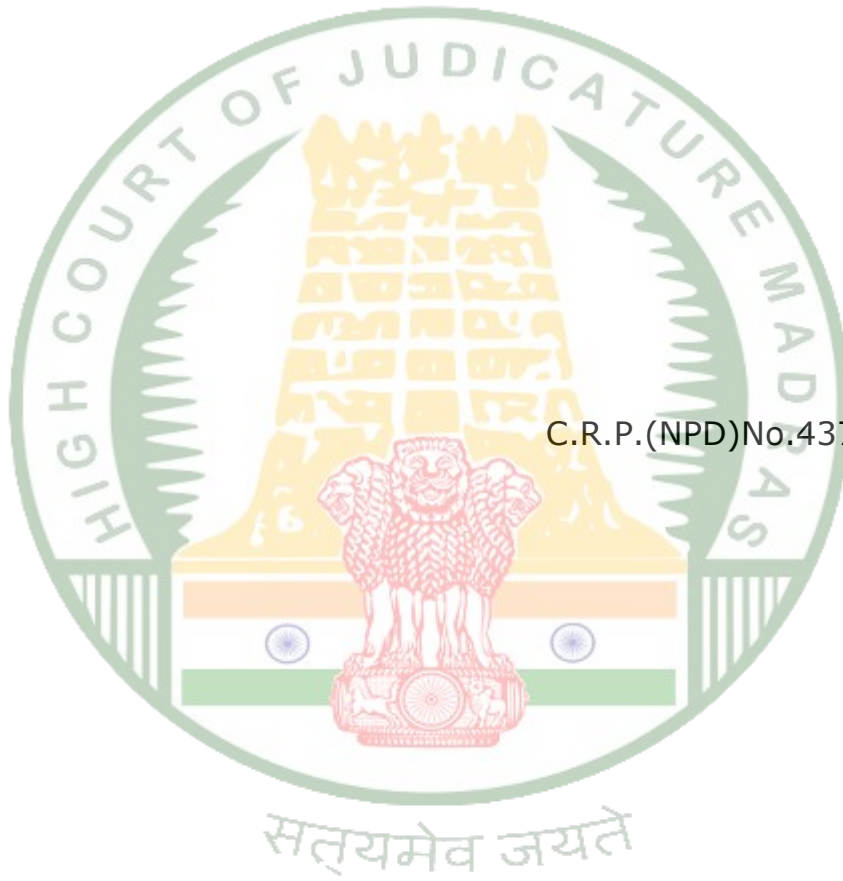
To
The Principal District Court, Villupuram.



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P.VELMURUGAN. J,

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