

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2018

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2132 of 2015
and M.P.No.1 of 2015

1.S.Ilaveni @ Senthamilselvi
2.S.Poorani

.. Petitioners

Vs

1.Manohare
2.T.Pushpam Jayamani
3.S.Kumuthini
4.K.Nalayini
5.R.Bharathi
6.M.Kalavathi
(Represented by her sister and
Power of Attorney Agent
R.Bharathi)

7.Sathyavathi Ramalingam
8.E.R.Chandran
9.Sivarama Krishnan

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 23.01.2015 made in I.A.No.636 of 2014 in O.S.No.197 of 2013 on the file of the I Additional District Court, Erode.

For Petitioners : Mr.J.Titus Enock for
Mr.I.C.Vasudevan

For R1 to R7 : M/S.P.T.Ramadevi

For R8 and R9 : Not ready in notice

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 23.01.2015 made in I.A.No.636 of 2014 in O.S.No.197 of 2013 on the file of the I Additional District Court, Erode.

2. The petitioners are defendants 2 and 3, respondents 1 to 7 are the plaintiffs, respondents 8 and 9 are defendants 1 and 4 in O.S.No.197 of 2013 on the file of the I Additional District Court, Erode. The respondents 1 to 7 filed the said suit for partition against the petitioners and respondents 8 and 9. According to the respondents 1 to 7, they are the legal heirs of Ramasamy Mudaliar and Damayanthi Ammal, who are the parents of the respondents 1 to 7 and 8th respondent, father-in-law of the 1st petitioner and grand parents of the second petitioner & 9th respondent. The petitioners and respondents 8 and 9 denied the right of the respondents 1 to 7 claiming partition of their share in the suit properties. According to them, there was an earlier partition and as per the Will executed by Damayanthi Ammal, their mother and Wills executed by Ramasamy Mudaliar, respondents 1 to 7 are not entitled to any share in the suit

properties. The respondents 1 to 7 filed I.A.No.636 of 2014 under Order XVIII Rule 1 C.P.C. for a direction to the petitioners and respondents 8 and 9 to begin the trial and to lead evidence and permit the respondents 1 to 7 to lead their evidence thereafter.

3. The petitioners and respondents 8 and 9 filed counter affidavit and denied all the averments made in the application and contended that the respondents 1 to 7 have not given any reason for filing the reply statement.

4. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, allowed the application filed by the respondents 1 to 7.

5. Against the said order dated 23.01.2015 made in I.A.No.636 of 2014 in O.S.No.197 of 2013, the present Civil Revision Petition is filed by the petitioners.

6. The learned counsel for the petitioners contended that only when the defendant admits the claim of the plaintiff, the defendant has right to begin the trial. In the present case, the petitioners and

respondents 8 and 9 have not admitted the claim of the respondents 1 to 7. When the petitioners and respondents 8 and 9 have not admitted the claim of the respondents 1 to 7, it is for them to substantiate their claim and to let in evidence first.

7. Per contra, the learned counsel for the respondents 1 to 7 contended that the petitioners and respondents 8 and 9 have not denied that the respondents 1 to 7 are the legal heirs of Ramasamy Mudaliar and Damayanthi Ammal. The petitioners and respondents 8 and 9 are contending that the respondents 1 to 7 are not entitled to any share in the suit property, in view of the three Wills alleged to have been executed by Damayanathi Ammal and Ramasamy Mudaliar. In view of the said fact, the petitioners and respondents 8 and 9 have to prove the genuineness of the Will, otherwise the respondents 1 to 7 are entitled to a preliminary decree as prayed for by them.

8. Heard the learned counsel for the petitioners as well as the respondents 1 to 7 and perused the materials available on record.

9. At the outset, it is seen from the materials on record that the petitioners and respondents 8 and 9 have not filed any counter

denying the claim of the respondents 1 to 7 and it is for the petitioners and respondents 8 and 9 to begin the trial. The counter affidavit filed in the typed set of papers and extracted in the impugned order by the learned Judge relates to the counter filed by the petitioners and respondents 8 and 9 in the application filed by the respondents 1 to 7 for permission to file reply statement.

10. On merits, it is seen that the petitioners and respondents 8 and 9 have not denied that the respondents 1 to 7 are the legal heirs of Ramasamy Mudaliyar and Damayanthi Ammal. They are denying the claim of the respondents 1 to 7 for their share in the suit properties on the ground of Wills executed by Ramasamy Mudaliyar and Damayanthi Ammal. The respondents 1 to 7 are disputing the genuineness of the Will. In such a case, it is for the petitioners and respondents 8 and 9 to prove the genuineness of the Will to disprove the claim of the respondents 1 to 7 that they have any share in the suit properties. The interpretation of Order XVIII Rule 1 C.P.C. taken by the learned counsel for the petitioners is not correct. The said Rule reads as follows:

“Right to begin — The plaintiff has the right to begin unless the defendant admits the facts alleged by the

plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin."

11. As per this Rule, if the defendant admits a portion of the plaintiff's claim and contends either in the point of law or on some additional facts alleged by the defendant, that plaintiff is not entitled to the decree then it is for the defendant to begin the trial. In the present case, the petitioners and respondents 8 and 9 claim exclusive right for the suit properties based on the Wills executed by Ramasamy Mudaliyar and Damayanthi Ammal. In view of such stand taken by the petitioners and respondents 8 and 9, it is for the petitioners and respondents 8 and 9 to begin the trial and prove the genuineness of the Will as per the law. Unless they prove the genuineness of the Will, the respondents 1 to 7 will succeed in the suit and they will be entitled to a share in the suit properties. The learned Judge has correctly appreciated the scope of Order XVIII Rule 1 C.P.C. and directed the petitioners and respondents 8 and 9 to begin the suit first. In the circumstances, there is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 23.01.2015.

12. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

22.02.2018

Index:Yes/No

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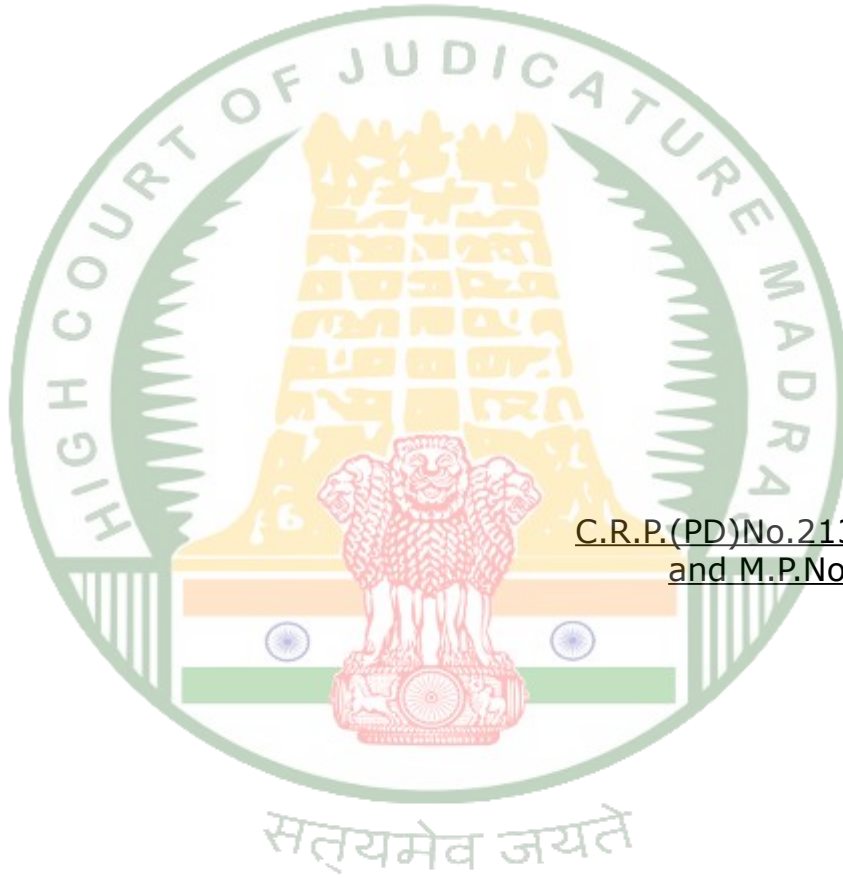
I Additional District Judge, Erode.



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V.M.VELUMANI,J.

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