



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P.(PD) (MD) No.1946 of 2015
and M.P.(MD) No.1 of 2015

1. Xavior Salamon
 2. Xavior Jebasingh ...Revision Petitioners/Petitioners/Plaintiffs
- vs-
1. Ponnumani Nadar
 2. Lysa ... Respondents/Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order dated 05.08.2015 passed in I.A.No.231 of 2015 in O.S.No.52 of 2014 on the file of the District Munsif-cum-Judicial Magistrate Court, Boothapandi by allowing this Civil Revision Petition.

For Petitioners : Mr.V.Meenakshisundaram
For Respondents : Mr.R.J.Karthick

O R D E R

The revision petitioners are the plaintiffs in O.S.No.52 of 2014 on the file of the District Munsif-cum-Judicial Magistrate Court, Boothapandi and in the suit, the plaintiffs sought for partition, etc. During pendency of the suit, the plaintiffs filed an application in I.A.No.231 of 2015 for withdrawal of the suit with liberty to file a fresh suit for the same cause of action and the said application was dismissed, on the ground that no prima facie materials have been adduced in respect of the relief sought for in the application. Aggrieved by such finding, the revision petitioner/defendant is before this Court.

2. It is the case of the revision petitioners that the defendants are their parents and the defendants purchased 25 cents of vacant land from one Beula Rajkumar on 14.03.1991 and also purchased one cent of property with a tiled house in the name of the plaintiffs, who were minor at that time. The plaintiffs, on their attaining majority, obtained patta in respect of the property. It is the case of the revision petitioners that they demanded settling the suit property by metes and bounds and despite their requests, the defendants attempted to alienate the entire property with the sole object to defeat their rights over the property.



3. The revision petitioners state that on account of creation of some documents by the defendants to sell the property, they originally filed the suit for partition and in the suit, instead of seeking the relief of declaration and injunction, the plaintiffs had inadvertently asked for partition of the property. Therefore, it is stated that it has become imperative for the plaintiffs to withdraw the said suit and in its place, file a yet another suit for declaration, permanent injunction, etc. The Trial Court, without considering the factual involved in the case, has simply rejected the plea of the petitioners. Hence, it is prayed that the order of the Trial Court is liable to be set aside.

4. On the contrary, learned counsel for the respondents/defendants would contend that the property in dispute was purchased by the defendants, when the plaintiffs were minors and as such, they have no vested right to ask for either partition or declaration. Moreover, even if the plaintiffs were allowed to file a separate suit for declaration, the suit to be filed will definitely be barred by limitation and therefore, the petition, if seen at any angle, is not maintainable and is liable to be set aside.

5. Heard learned counsel on either side and perused the material documents available on record.

6. It is seen that the dispute is essentially between the parents and sons over a particular property, which was admittedly purchased, when the plaintiffs were minors. The application was filed by the plaintiffs under Order XXIII Rule 1(3)(b) of CPC, which stipulates as under:

(3) Where the Court is satisfied -

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

The Trial Court has mainly dismissed the application stating that sufficient reasons have not been placed before it in respect of the relief sought for. However, a close scrutiny of the averments made in the application filed by the plaintiffs would unfold that the plaintiffs have narrated several steps taken by the defendants to alienate the subject property, namely, the 2nd defendant had settled some portion of the property in the name of her daughter / sister of the plaintiffs and the daughter in turn executed a settlement deed in favour of her father / 1st defendant and the 1st defendant, while selling six plots to one Robinson, again settled the property in Doc.No.1096 of 2010 in his wife's name. It is not known as to why such transfers took place and the plaintiffs stated that some forged documents were created so as to alienate their property. Normally, if a property is purchased in the name of a minor, on attaining majority, it will devolve upon him/her and the guardian so appointed

at the time of purchase is only entitled to administer the same and he cannot create a cloud over the property without his/her consent.

7. In the case on hand, it is averred by the plaintiffs that the suit was inadvertently drafted with the prayer of partition instead of declaration and permanent injunction. The plaintiffs, in order to rectify the mistake, has filed an application for withdrawal as well as filing a fresh suit with the same cause of action, which, in the considered opinion of this Court, especially after going through the relevant provisions of CPC, is permissible and therefore, this Court is of the view that the order dated 05.08.2015 passed in I.A.No.231 of 2015 in O.S.No.52 of 2014 by the learned District Munsif-cum-Judicial Magistrate, Boothapandi, has no legs to stand and is un-sustainable.

8. In the result,

a) this civil revision petition is allowed and the order dated 05.08.2015 passed in I.A.No.231 of 2015 in O.S.No.52 of 2014 by the learned District Munsif-cum-Judicial Magistrate, Boothapandi, is hereby set aside;

b) the petitioners are permitted to withdraw the present suit and are at liberty to institute a fresh suit on the same cause of action.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To:

1. The District Munsif-cum-Judicial Magistrate,
Boothapandi.

2. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1 CC to Mr.D.NALLATHAMBI, Advocate in SR.No.68406

+1 CC to Mr.R.J.KARTHICK, Advocate in SR.No.68931

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RJ/RP/SAR-3/20/07/2018 - 3P/6C

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