



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.06.2018
PRONOUNCED ON : 12.09.2018

WEB COPY

CORAM :
THE HONOURABLE MR.JUSTICE S.S.SUNDAR
C.R.P.(PD)(MD)No.2294 of 2013
and
M.P.(MD)No. 1 of 2013

1.Packiam
Panchavarnam (Died)
3.Kalimuthu
4.Shanmugavel
5.Chandrasekaran
6.Amutha ... Petitioners / Respondents / Plaintiffs

Vs.

Periyasamy ... Respondent / Petitioner / Defendant

(Petitioners 3 to 6 were brought on record as legal representatives of the deceased second petitioner vide order dated 19.09.2014 in M.P (MD)No.2 of 2014)

PRAYER: Petition filed under Section 227 of Constitution of India, to call for the records and set aside the order dated 18.07.2013 insofar as para 15 and 16 of the order relates to payment of 1/3 share of sale proceeds of cut trees to the respondent in I.A.No.293 of 2013 in O.S.No.193 of 2013 on the file of the Principal Subordinate Court, Dindigul.

For Petitioners : Mr.H.Lakshmishankar
For Respondent : Mr.V.Sitharanjan Dass

ORDER

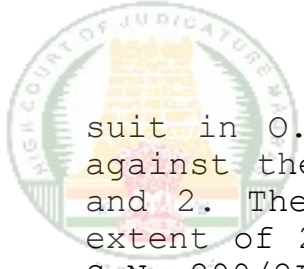
This Civil Revision Petition is filed against the fair and decreetal order dated 18.07.2013 in I.A.No.293 of 2013 in O.S.No.193 of 2013 on the file of the Principal Subordinate Court, Dindigul.

2.The plaintiffs in the suit in O.S.No.193 of 2013 on the file of the Principal Subordinate Court, Dindigul are the revision petitioners. The second plaintiff / second petitioner herein died during the pendency of the proceedings and the petitioners 3 to 6 were brought on record as legal representatives of the deceased second petitioner.

3.The brief facts that are necessary for the disposal of this petition are as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

3.1.The petitioners 1 and 2 herein, as plaintiffs, filed the



suit in O.S.No.193 of 2013 for partition of the suit properties against the respondent herein, who is the brother of petitioners 1 and 2. The suit properties are described as two items with total extent of 2.80.00 ares (equivalent to 7 acres) of land comprised in S.No.299/2A1 and 299/2A3 in Sirumalai Panaiyur, Dindigul Taluk. It is stated that the suit properties are located in the Sirumalai Hills with about 1000 valuable trees. The plaintiffs claimed 2/3 share in all the suit properties and they wanted a partition and separate possession of their share. The suit was filed on 03.06.2013 alleging that the respondent attempted to alienate the properties and to cut down and sell away the trees standing in the suit properties.

3.2.Pending suit, the revision petitioners have also filed an application in I.A.No.259 of 2013 for appointment of Advocate Commissioner to note down the cutting of trees by the respondent. It is stated in the Advocate Commissioner's report that the suit properties are dense forest having 1000 of valuable trees and species. He further found that several trees have been cut down and that he see 839 wooden log, of all 8" length, lying on the ground.

3.3.Thereafter, the respondent herein filed an application in I.A.No.293 of 2013 for an injunction restraining the revision petitioners from interfering with the rights of respondent herein to sell the trees that were cut. The trial Court, after considering the fact that the revision petitioners are the legal representatives of the suit properties, which stand in the name of their father and pendency of the partition suit, dismissed the application for injunction with a liberty to the respondent to sell the wooden log cut by the respondent through a receiver by filing an application to appoint a receiver to sell the wooden logs.

3.4.Thereafter, an Advocate Commissioner was appointed in I.A.No.339 of 2013 in O.S.No.193 of 2013 for selling the wooden log by public auction and the Advocate Commissioner sold the wooden logs by public auction and realized a sum of Rs.8,10,000/- as sale proceeds. The entire amount of Rs.8,10,000/- was also deposited by the Advocate Commissioner. The respondent herein filed another application in I.A.No.476 of 2013 to pass an order to issue cheque for a sum of Rs.2,70,000/- due to him towards his admitted 1/3 share. It is contended by the respondent that the revision petitioners have admitted his 1/3 share in the suit properties and that therefore, they cannot have any objection for him to withdraw his 1/3 share out of the total amount lying to the credit of suit, namely, Rs.8,10,000/-. Since the revision petitioners have not disputed his 1/3 share, the application came to be filed.

3.5.This application was resisted by the revision petitioners 1 and 2 on the ground that only after a full fledged trial, the Court would be able to decide the rights and liabilities of the parties in a partition suit and that before passing of preliminary decree, no

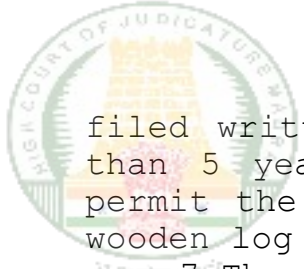


parties can claim any right, with reference to specific properties. It is further stated that the respondent has illegally cut down the trees, which were standing in the suit properties, only to defraud the plaintiffs in the suit and in such circumstances, the Court should not show any indulgence to the respondent. Since the sale proceeds is also part and parcel of the suit properties, it is contended that the respondent is not entitled to withdraw any portion of the amount, even before determining the parties' rights in the suit for partition.

4. Sum and substance, the revision petitioners contended that before deciding the legal entitlement of parties, the petition is not maintainable. It is also stated that the respondent is only attempting to take possession of the suit properties, without even filing a written statement. Having regard to the conduct of the respondent, who wanted to stealthily remove the entire wooden logs and misappropriate the same, it is contended that the respondent cannot be given any privilege and cannot be allowed to take advantage of his own wrong.

5. It is pertinent to mention that earlier in I.A.No.293 of 2013, the respondent has filed an application for an injunction restraining the revision petitioners from interfering with the respondent's right to sell the wooden logs cut by him and the said application was dismissed, leaving it open to the respondent to file an application for appointment of a receiver, so as to enable the respondent to take 1/3 of the amount realised by way of selling wooden logs and to take 1/3 of sale proceeds, which is not in dispute. It was further observed that 2/3 share claimed by the petitioners are subject to the suit and it will be decided after the trial. The Interlocutory application filed by the respondent in I.A.No.293 of 2013 was dismissed and liberty was given to the respondent as he is entitled to get his 1/3 amount of the total sale proceeds of wooden logs, since it is not in dispute. However, it was further observed that the right of revision petitioners will be decided during trial. It is against this order, the plaintiffs have preferred the above Civil Revision Petition.

6. The learned Counsel for the revision petitioners submitted that the trial Court has erred in holding that the rights of the respondent to get 1/3 is not disputed and that the claim of the revision petitioners is disputed. The learned Counsel for the revision petitioners also stated that the trial Court has rewarded the respondent for his wrongful illegal act of cutting trees standing in the undivided property against the wishes of co-owners and such person is now given further right to get 1/3 share of the sale proceeds which is unmindful of the legal implication. It is also stated that in a suit for partition, the right and entitlement of apportionment of incomes, rents and profits can be arrived at only after full trial and only at the time of passing of final decree, after taking into many factors. The learned Counsel for the revision petitioners pointed out that the respondent has not even



filed written statement, even though the suit is pending for more than 5 years. It is, in these circumstances, the observation to permit the respondent to receive 1/3 share of the sale proceeds of wooden log is arbitrary.

7. The learned Counsel for the respondent, however, stated that the respondent disputed the rights of the plaintiffs claiming any share in the suit property. It is, in these circumstances, the trial Court is absolutely right in making an observation to enable the respondent to get his 1/3 share out of the money deposited by selling the wooden log. When this Court posed a question to the learned Counsel for the respondent that in the absence of written statement, disputing the rights of plaintiffs / revision petitioners, what shall be wrong, if the revision petitioners are also permitted to take their 2/3 share out of the sale proceeds of the wooden log. However, the learned Counsel for the respondent opposed this suggestion and contended that the respondent is disputing the plaintiffs' right or claim for any share in the suit properties.

8. It is to be seen that there is no dispute with regard to the relationship. In the plaint, it is stated that the suit properties were allotted to the share of plaintiffs and defendant in an oral partition, by which other properties were allotted to their father's brothers. In the plaint, the revision petitioners admitted that the suit properties are the ancestral properties of their father Subbiah Pillai. It is admitted that the plaintiffs' father died about 40 years back. Hence, it is probable that the plaintiffs may get 2/3 share out of the 1/2 share, that would be allotted to their father.

9. The application filed by the respondent for an injunction was rightly dismissed by the trial Court on the ground that he cannot seek injunction against other co-owners preventing them from exercising their right as co-owners. In the application, the Court need not decide other contentions issues, even before filing the Written Statement, as to the rights and entitlement of parties. The respondent has not even filed any written statement. However, pursuant to the order passed in I.A.No.293 of 2013, the respondent has filed another application in I.A.No.476 of 2013 seeking an order for issuing a cheque for a sum of Rs.2,70,000/- being 1/3 share of the respondent in the money, which is lying to the credit of the suit.

10. In view of the order passed in I.A.No.293 of 2013, the revision petitioners may not have any chance to defend the application on merits. Therefore, the observation and findings of the trial Court in I.A.No.293 of 2013 is neither warranted nor appropriate. Having regard to the facts and circumstances of the case, the lower Court ought to have taken into account the fact that the respondent has not filed any written statement, disputing the right of plaintiffs to get 2/3 share in all the suit properties. In such circumstances, no indulgence can be shown to the respondent to give permission to him to withdraw 1/3 of deposit. In such



circumstances, the delay in filing the written statement cannot be taken advantage by the respondent herein to claim a specific share in the property on the basis of admission of the plaintiffs.

11. Having regard to the conduct of the respondent in cutting and removing the trees during the pendency of the suit, this Court is unable to subscribe the view of trial Court in making an observation in favour of the respondent. Hence, the impugned order in I.A.No.293 of 2013 in O.S.No.193 of 2013 is set aside. However, the application in I.A.No.496 of 2013 that has been filed by the respondent herein can be considered by the trial Court and disposed of on merits and uninfluenced by any of the observation or findings of the Court in the order in I.A.No.293 of 2013 in O.S.No.193 of 2013.

12. If no written statement is filed by the respondent, within one week from the date of receipt of a copy of this order, the lower Court may proceed further by treating the plaintiffs' right, who claimed 2/3 in the suit property, is not in dispute. Since, no other person is entitled to the share of suit properties, it is open to the revision petitioners also to file similar application to claim their 2/3 share out of sale proceeds and both applications can be considered jointly and disposed of on merits.

13. With the above observation, this Civil Revision Petition is therefore allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar(CS-IV)

To

1. The Principal Subordinate Judge, Dindigul.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to Mr.V.SITHARANJANDAS, Advocate, SR.No. 83991

+1cc to Mr.H.LAKSHMI SHANKAR, Advocate, SR.No. 83773

C.R.P. (PD) (MD) No.2294 of 2013
12.09.2018