



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 25.04.2018

Pronounced on: 05.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

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C.R.P. (MD) No.508 of 2013

and

M.P. (MD) Nos.1 and 2 of 2013

1.K.M.Seetharaman

2.Murugan

: Petitioners/Petitioners/Appellants

-Vs.

1.Subbiah

2.Valli

3.Kumar @ Vasanthakumar

4.M.Kalyani

5.M.Seenivaasan

: Respondents/Respondents/Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order passed in I.A.No.25 of 2012 in A.S.No.24 of 2011, dated 12.12.2012 on the file of the III Additional District and Sessions Court, Tirunelveli by allowing this Civil Revision Petition.

For Petitioners : Mr.H.Arumugam

Respondent No.1 : Mr.A.Arumugam

Respondents 2 to 5 : No appearance

ORDER

The defendants 4 and 6 in the suit in O.S.No.45 of 2008 on the file of the Sub Court, Valliyoor, and the appellants in A.S.No.24 of 2011 on the file of the III Additional District and Sessions Court, Tirunelveli, are the revision petitioners in this Civil Revision Petition.

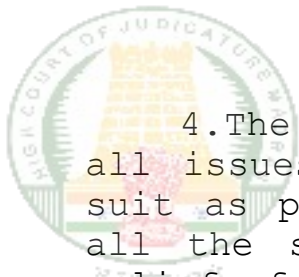
2.The brief facts that are necessary for the purpose of disposal of this Civil Revision Petition are as follows:

2.1.The first respondent in this Civil Revision Petition has filed a suit in O.S.No.45 of 2008 for partition and separate possession of 1/6th share in all the suit properties and for consequential injunction restraining the defendants from alienating or encumbering the suit properties till the final decree is passed. The revision petitioners are defendants 4 and 6. The case of the first respondent /

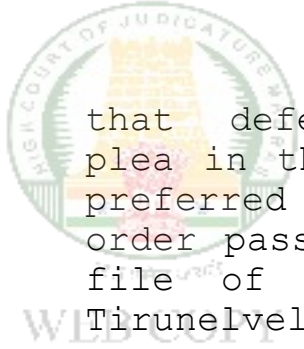


plaintiff in the suit is that the suit property belonged to plaintiff's grand-father one Kalyani Chettiar and that the said Kalyani Chettiar executed a Will on 14.08.1969. Kalyani Chettiar died on 22.09.1977 and hence, it is stated that the Will came into force. The plaintiff's father Muntrumugam Chettiar died on 21.03.1978. The case of the plaintiff is that Kalyani Chettiar bequeathed the suit properties in favour of his wife one Valliammal till her life time and that after her life time the properties should devolve on the plaintiff and defendants who are the grand-children of Kalyani Chettiar. It is further stated in the plaint that the fourth defendant claiming to be the exclusive owner has executed a sale in respect of the fourth item of suit property in favour of 6th defendant and that the said sale deed is not binding on the plaintiff or other defendants and that the suit is necessitated because the fourth defendant refused to agree for a partition in respect of the suit properties. It is also stated in the plaint that the Will dated 14.08.1969 was upheld in a suit filed by the plaintiff and others in O.S.No.201 of 1991.

3.The suit was contested by the defendants 4 and 6. It is the specific case of revision petitioners that the plaintiff is not entitled to any right as per the Will dated 14.08.1969. It is further stated that the Will is also invalid and inoperative on account of Section 10 of Transfer of Properties Act. The revision petitioners also denied that the suit properties are the self-acquired property of Kalyani Chettiar. It is further contended by the revision petitioners that as per the Will, the properties bequeathed under the Will should devolve upon only the sons and daughters of Muntrumugam Chettiar, who were yet to born and that the plaintiff and defendants 1 to 3 have no right in the suit property under the Will. Stating that as per the Will, the defendants 4 and 6 alone are entitled to the properties bequeathed under the Will, it is contended that the suit filed by the plaintiff is unsustainable in law. It is also the further case of the revision petitioners that the property sold by the fourth defendant in favour of the 6th defendant is a property bearing Door No.87 in Sundaravinayagar Street and that the same is not the subject matter of the suit. Therefore, there is no cause of action for the plaintiff to file a suit against the 6th defendant. Finally, it was also contended by the revision petitioners that all the properties of Kalyani Chettiar were not included in the suit. The fourth defendants in the suit who is the first petitioner herein has also filed an independent written statement specifically raising an issue that the suit is bad for partial partition on account of non-inclusion of several properties of Kalyani Chettiar situated in Valliyoor Village.



4. The trial Court after framing necessary issues answered all issues in favour of the first respondent and decreed the suit as prayed for by granting 1/6 share to the plaintiff in all the suit properties. The trial Court also granted the relief of consequential permanent injunction. Aggrieved by the judgment and decree of the trial Court, the revision petitioners have filed an appeal in A.S.No.24 of 2010 on the file of the Third Additional District and Sessions Court, Tirunelveli. During the pendency of appeal, the revision petitioners filed a petition in I.A.No.25 of 2012 to receive additional written statement on the side of appellant / fourth defendant. In the additional written statement filed along with the petition the revision petitioners have referred to a sale deed alleged to have been executed by the plaintiff on 27.01.2003 and contended that the properties had already been partitioned and the plaintiff has sold the property allotted to him in the said partition. It is categorically stated in the additional written statement that the suit for partition is an abuse of process of law as there was an oral partition that took place between the parties to the proceedings. The defendants also annexed with the additional written statement a sale deed dated 27.01.2003 alleged to have been executed by the plaintiff in respect of a property which is not the subject matter of the suit. The revision petitioners have also filed another application in I.A.No.13 of 2013 to receive several documents as additional evidence. In the affidavit filed in support of I.A.No.13 of 2013, the revision petitioners have stated that the first respondent herein had sold several properties belonging to the father of parties and ancestral properties to several persons suppressing the fact that the properties are the joint family properties. It is further stated that first respondent herein with an ulterior motive suppressed the existence of several properties and not included those properties conveyed by him earlier. In the petition a list of 12 sale deeds were referred to and most of them were executed by the first respondent herein. The trial Court dismissed the petition filed by the revision petitioners to receive the additional written statement at the appellate stage mainly on the ground that the plea in the additional written statement about the oral partition is contrary to the original written statement and that therefore, a plea contrary to the original written statement cannot be permitted. Going by the facts, the lower Court also found that the petition has been filed at a belated stage without any valid reason introducing a new case for the defendants and that therefore, permission cannot be granted to the revision petitioners to file an additional written statement. The lower Court, dismissed the petition, after elaborately discussing the facts and referring to some of the precedents of this Court for the proposition



that defendants cannot raise a plea which is contrary to the plea in the written statement. The revision petitioners have preferred the above Civil Revision Petition challenging the order passed in I.A.No.25 of 2012 in A.S.No.24 of 2011 on the file of the III Additional District and Sessions Court, Tirunelveli.

5.The learned counsel appearing for the revision petitioners relied upon a sale deed dated 27.01.2003 executed by the first respondent herein in favour of a third party stating that the said sale is in respect of one of the ancestral properties of the plaintiff. In the said sale deed, recitals are to the effect that the suit properties are the ancestral properties of first respondent and that the same was obtained by him in an oral partition amongst the members of the joint family. The specific stand taken by the revision petitioners in the original written statement is by disputing the right title and interest of the plaintiffs and that it is to the effect that the Will did not confer any right in favour of the plaintiff and defendants 1 to 3 as the suit properties should devolve only upon the unborn sons of Muntrumugam Chettiar and that the plaintiff and defendants 1 to 3 were given other properties.

6.As pointed out by the lower Court, having regard to the bare fact that the revision petitioners did not admit the rights of plaintiff to seek partition, the plea that there was an oral partition between the plaintiff and defendants in respect of the suit properties is contrary to the specific stand in his original written statement filed by the revision petitioners. Law is settled that the defendants cannot be permitted to raise an additional written statement to introduce a plea which is either totally contradictory to the plea taken in the original written statement or to disown a plea which was raised originally in the pleading. The power of Court under Order 8, Rule 9 C.P.C. though discretionary, the Court is expected to exercise its discretionary power depends on the facts and circumstances of each case and the power of appellate Court to receive additional written statement which is not given expressly under Order 8, Rule 9 C.P.C., cannot be permitted unless there are some special circumstances to convince the Court that the facts stated in the additional written statement were not within the knowledge of the defendants earlier. The learned counsel for the revision petitioners, then contended that the plea regarding oral partition might be a new plea, but, the plea that the suit is ~~bad for partial partition~~ cannot be taken as contrary to the original written statement as the revision petitioners have raised the plea. It is stated that the revision petitioners



have already filed the documents under which the plaintiff / first respondent sold several properties belong to the plaintiff and defendants which have been omitted in the suit. Since the revision petitioners have already filed a petition under Order 41, Rule 27 C.P.C. to receive the sale deeds as additional evidence it is contended that the additional documents are very much relevant and the order of the lower Court dismissing the petition in toto is improper. This Court considered the rival submissions of the learned counsel appearing on either side. It is admitted that the parties to the suit are the sons and daughters of one Muntrumugam Chettiar, father of plaintiff. The parties are also the grand children of Kalyani Chettiar. The defendants interpreted the Will dated 14.08.1969 to hold that the plaintiff is not entitled to any share in respect of the suit properties covered under the Will. The definite stand of defendants 4 and 6 is obvious and therefore, he was not expected to plead that there was an oral partition in the family to non-suit the plaintiff to seek partition. Going by the admitted facts, the revision petitioners cannot be permitted to file additional written statement regarding oral partition.

7.The learned counsel for the revision petitioners stated that there is no legal impediment for raising a plea regarding partial partition as the plaintiff has not included several properties in the suit and that the properties had already been dealt with by plaintiff suppressing their existence to the other heirs in the family. The plea that the suit is bad for partial partition is already there in the written statement and such a plea does not require any further elaboration or details. The revision petitioners have already filed a petition to receive the sale deeds executed by the plaintiff as additional documents. In the additional written statement filed before the appellate Court no specific plea is raised on the ground that the suit for partition is not maintainable without including the other properties belonged to the family. Hence, the submissions of the learned counsel appearing for the revision petitioners that the revision petitioners should be permitted to raise a plea with regard to partial partition cannot be entertained at this stage. It is open to the revision petitioners to prosecute the other application filed in I.A.No.13 of 2013 to receive additional evidence at the appellate stage. It is open to the revision petitioners to mark the sale deeds alleged to have been executed by the plaintiff in favour of the third parties in respect of other properties belong to the joint family and it is also open to the revision petitioners to establish that the suit is bad for partial partition without the additional written statement.



8.As a result, this Civil Revision Petition is dismissed. However, there is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The III Additional District and Sessions Court,
Tirunelveli.

2. The Sub Court, Valliyoor.

+1CC to Mr.A.ARUMUGAM, Advocate, SR.No.66978

+1CC to Mr.H.ARUMUGAM, Advocate, SR.No.67108

C.R.P. (MD) No.508 of 2013
05.06.2018

SRM

ES/SKN/RSK/SAR 1/18.06.2018/6P/5C