

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

C.R.P.(PD) No.4119 of 2011

and

M.P.No.1 of 2011

- 1.Meenatchi (Died)
 - 2.Kamatchi
 - 3.V.Sulochana @ Gowri (Died)
 - 4.Lakshmipathy
 - 5.L.Srinivasan (Died)
 - 6.G.Vasudevan
 - 7.V.Lakshmi
 - 8.S.Hemalatha
 - 9.S.Senthil Kumar
 - 10.S.Geetha
- ... Petitioners

(Appellants 3 to 10 brought on record as LRS of the deceased A-1 VIZ.,Meenatchi vide order dated 19.07.2019 made in CMP.No.14578, 14581, 14583 and 14585/2019 in CRP (PD) 4119/2011)

(Appellants 6 and 7 brought on record as LRS of the deceased A-3 VIZ.,V.Sulochana @ Gowri vide order dated 19.07.2019 made in CMP.No.14578, 14581, 14583 and 14585/2019 in CRP (PD) 4119/2011)

(Appellants 8 to 10 brought on record as LRS of the deceased A-5 VIZ.,L.Srinivasan vide order dated 19.07.2019 made in CMP.No.14578, 14581, 14583 and 14585/2019 in CRP (PD) 4119/2011)

vs.

- 1.Ramachandran (Died)
- 2.Batmavathi @ Kabali
- 3.Karpagam

4.Mahalatchumi
5.Venkatachalapathy
6.Banumathi @ Santhanalatchumi
7.Amulu
8.Vijayalakshmi
9.Santhi
10.R.Santhanakrishnan
11.R.Santhabai
12.R.Vijayabhuvaneswari
13.R.Barani Devi
14.R.Loga Prakash

... Respondents

(RR10 to 14 brought on record as LRS of the deceased R-1 VIZ., Ramachandran vide order dated 19.07.2019 made in CMP.No.14579, 14582, 14584 and 14585/2019 in CRP (PD) 4119/2011)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decree dated 12.08.2011 in IA.No.772 of 2007 in O.S.No.379/1998 on the file of the Additional Subordinate Judge, Puducherry.

For Petitioner : Mr.K.S.Viswanathan
R1 : Died
R2 to R4, R6, R7 : No appearance
R8, R9
R5 : Mr.T.P.Manoharan
For R10 to R14 : Mr.S.R.Marudhachalamurthy

ORDER

The present Civil Revision Petition is filed against the order and decree dated 12.08.2011 passed in IA.No.772 of 2007 in O.S.No.379/1998, on the file of the Additional Subordinate Court, Puducherry.

2. The learned counsel appearing for the petitioner submitted

that the petitioner herein filed O.S.No.379 of 1998 for partition of the schedule property. The defendants have filed a written statement. The plaintiff examined himself as PW1 and examined one Thirumal as PW2 and marked Ex.A1 to Ex.A7. Both PW1 & PW2 were cross examined. Thereafter, on behalf of the defendants, the first defendant examined himself as DW1 and Ex.B1 to Ex.B8 were marked. On three occasions DW1 has not appeared for cross examination and therefore, the defendants side evidence was closed and the suit was decreed in part. The preliminary decree was passed in respect of the first item of the suit property alone and the plaintiffs are entitled to get 1/4th share each and in respect of the other prayers, the suit was dismissed on 18.06.2007. Thereafter, the defendants in the suit filed I.A.No.772 of 2007 under Order 9 Rule 13 r/w Section 151 of Civil Procedure Code to set aside the ex-parte decree dated 18.06.2007 and the same was allowed by the learned Subordinate Judge, Pondicherry and hence the Civil Revision Petition.

3. After hearing the learned counsel for the petitioner, it is seen that the decree was passed in O.S.No.379 of 1998, only after the first defendant entered into the witness box and examined himself as DW1, marked Ex.B1 to Ex.B8. As he has not made himself available for cross examination, the trial Court has pronounced the judgment and decree.

Therefore, the point arises in the Civil Revision Petition is whether the decree passed in the said Original Suit is a contested decree.

4. It is seen from the records that I.A.No.772 of 2007 was filed by the defendants 1, 3 to 10 treating the decree as an exparte decree and the same was filed under Order 9 Rule 13 r/w Section 151 of Code of Civil Procedure. Paragraph No.5 of the orders passed in OS.No.379 of 1998 shows that "since DW1 has not appeared before this Court for cross examination, his evidence was discarded".

5. Heard, the learned counsel for the 5th respondent. He relied upon the decision reported by this Court in "**2005(4) CTC 451 (DB)**" and "**(1986) 4 SCC 699**". The case of the defendant in the Judgments cited above is that he has not even entered into the witness box, no oral or documentary evidence was adduced and the plaintiffs were also not cross examined.

6. As stated above, in the instant case, the defendant has cross examined PW1 and PW2 and further entered into witness box and marked Ex.B1 to Ex.B8. Hence, taking into consideration that the evidence of the defendant is specifically available on record, the trial Court has passed the judgment on merits. Therefore, the petition under Order 9 Rule 13 r/w Section 151 of Code of Civil Procedure is not maintainable. In such

circumstances, the order passed in IA.No.772 of 2007 in O.S.No.379/1998 on the file of the Additional Subordinate Judge, Puducherry is set aside and the Civil Revision Petition is allowed.

7. It is seen from the records that the suit is for partition and the case of the defendants is solely based upon the 'Will' as stated in the written statement. Therefore, it is open to the defendants to file additional written statement, if necessary. It is for the Appellate Court to consider the period of pendency before this Court and impose cost for the delay in filing an appeal.

8. With these observations, the Civil Revision Petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

10.12.2019

mtl

Index : Yes/No

To

The Additional Subordinate Judge,
Puducherry.

C.R.P.(PD) No.4119 of 2011

RMT. TEEKAA RAMAN, J.

mtl



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