

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.06.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(NPD) No.440 of 2015
and M.P.No.1 of 2015

Gopalakrishnan

.. Petitioner

vs

1.P.T.Rajkumar
2.Santyhoshkumar
3.Nithiyakumar
4.Raghuraman

(R1 to R4 recognized as Lrs of deceased
1 to 7 defendants as per order dated 13.08.2012
in I.A.No.240 of 2012)

.. Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 31.07.2014 passed in I.A.No.67 of 1995 in O.S.No.33 of 1992 on the file of District Munsif Court, Ranipet, Vellore.

For Petitioners : Mr.S.Baskaran for
Mr.V.R.Karthikeyan

For R1 : M/s.G.R.M.Palaniappan

For R2 to R4 : No Appearance

ORDER

The present Civil Revision Petition has been filed against the impugned fair and decretal order dated 31.7.2014 passed by the District Munsif Court, Ranipet in I A.No.67 of 1995 in O.S.No.133 of 1992.

2. By the impugned order, the said court has dismissed the petition filed in the final decree proceeding to issue the said certificate in favour of the petitioner on the ground that the petitioner cannot have a dual role of both the legal representative of his father (the plaintiff in O.S.No.133 of 1992) and as a legal heir of his paternal uncle P.Subramanian (2nd Defendant).

3. The petitioner's father P. Govindaraj had filed in O.S.No.220 of 1978 to partition the suit schedule properties. The other defendants in the suit were his other paternal uncles. Subsequently, some of them died and therefore their legal representatives were impleaded in the suit.

WEB COPY

4. A preliminary decree was passed on 20.04.1982 followed by final decree on 30.01.1987. Thereafter, the property was auctioned before the court on account of the fact that the property was incapable of being partitioned.

5. The 2nd defendant P.Subramanian (since deceased) purchased the property in the court auction and deposited a sum of Rs.72,000/- on 26.08.1992.

6. After depositing the aforesaid amount, the petitioner's paternal uncle P.Subramanian filed I.A.No.67 of 1995 in O.S.No.133 of 1992 for issue of sale certificate pursuant to the final decree proceedings dated 25.08.1992.

7. Aggrieved by the order passed in the auction, C.M.A.No.16 of 1992 was filed by some of the aggrieved persons who are the respondents herein. C.M.A.No. 16 of 1992 was kept pending for some time.

8. Under these circumstances, CRP No.3877 of 1998 was filed for a direction to dispose C.M.A.No.16 of 1992. This court on 04.01.1999 directed the lower court to dispose C.M.A No.16 of 1992. Thereafter, the said appeal was dismissed.

9. Pending disposal of the above proceedings, petitioner's father (i.e. plaintiff in the suit) died. Thereafter, the petitioner and his mother were

brought on record as legal representative of his father. Thereafter, petitioner's mother also died.

10. During the pendency of the above proceedings, the petitioner's paternal uncle P.Subramanian (2nd defendant/successful bidder) executed a will dated 31.01.2002 in favour of the petitioner.

11. On 6.5.2002, the petitioner's paternal uncle P.Subramanian also died. Under these circumstances, the petitioner herein filed I.A.No.21 of 2002 to recognise him as the legal representative of his uncle as well.

12. In the aforesaid proceeding, the will executed by his late uncle P.Subramanian (2nd defendant) in favour of the petitioner was marked. The petitioner along with the attester of the will were also examined. Thereafter, I.A.No.21 of 2002 was allowed on 12.10.2004.

13. Thus, the petitioner not only became the legal representative of his deceased parents (his father being the plaintiff in the suit) but also the legal representative of his deceased uncle P.Subramanian, 2nd defendant who had

executed a will dated 31.1.2002 in favour of the petitioner bequeathing the suit property purchased in the court auction in favour of the petitioner.

14. The respondent herein had earlier filed CRP.No.1015 of 2005 against order dated 12.10.2004 passed in I.A.No.21 of 2002 in CRP.No.1015 of 2015 came to be dismissed by this Court on 09.03.2012. Further, SLP before the Hon'ble Supreme Court was also dismissed on 19.2.2014.

15. Heard the learned counsel for the petitioner and the respondents. I have perused the records of the case.

16. There is no denying regarding the status of the petitioner as the legal representative of his deceased uncle P.Subramanian, 2nd defendant who had allegedly executed a will dated 31.01.2002 in favour of the petitioner bequeathing the suit property purchased in the court auction.

17. The status of the petitioner as the legal representative of his deceased uncle P.Subramanian (2nd defendant) stands concluded by an order dated 12.10.2004 passed in I.A.No.21 of 2002 O.S.No.133 of 1992.

18. This decision has been affirmed by this court in C.R.P (NPD) 1015 of 2005 in its order dated 9.3.2012 and further stands re-affirmed by the decision of the Hon'ble Supreme Court on 19.2.2014 while dismissing SLP filed against the order dated 9.3.2012 in C.R.P (NPD) No.1015 of 2005.

19. The District Munsif Court, Ranipet has concluded that the decree cannot be drafted and therefore the relief was not enforceable as the petitioner was adorning the role of legal representative of his father (the plaintiff) and that of the 2nd defendant. The court has referred to Order 23 Rule 1A of CPC and has stated that the petitioner should transpose as the plaintiff.

20. The discussion in the impugned order is based on the decision of the Karnataka High Court *K.L Sivanajamurty Vs KL Nagaraj* is not available.

21. Order 23 Rule 1A of CPC deals with a situation where defendant may be transposed as a plaintiff under certain circumstances.

22. Order 23 Rule 1A of CPC applies where the suit is withdrawn or abandoned by a plaintiff under Rule 1, and a defendant applies to be transposed as a plaintiff under Rule 10 of Order 1, the Court may having regard to the question whether the applicant has a substantial question to be decided may allow such transposition. Here neither the plaintiff has withdrawn or abandoned. In this case the original plaintiff (the father of the petitioner) died and therefore the petitioner became his legal representative in the suit. Thereafter, 2nd defendant (petitioner's paternal uncle) purchased the suit property through court auction and later executed a will in favour of the petitioner. Therefore, the petitioner also became the legal representative of his deceased uncle. By becoming legal representative of the plaintiff and the 2nd defendant, the rights of the petitioner cannot be compromised. The petitioner can neither abandon the suit or withdraw the suit filed by his father to partition the property.

23. The fact that the petitioner's paternal uncle (2nd defendant) had bequeathed the property in favour of the petitioner remains concluded.

24. Therefore, the petitioner cannot be denied of the right to have a sale certificate issued to him which otherwise would have been issued to his

deceased uncle (2nd defendant) during his life time but for the litigations orchestrated by the respondents to deny the benefit of the final decree passed in the suits.

25. All that was required to be seen was whether the court was required to issue a sale certificate to the petitioner's deceased uncle (2nd defendant/successful bidder in the court auction) during his life time. However, it could not be executed due to prolonged litigation. Subsequently, the petitioner became the beneficiary under the will executed by his uncle (2nd defendant/successful bidder in the court auction). The rights accrued to the petitioner under the Will of the 2nd defendant cannot be scuttled by taking an hyper- technical stand that the petitioner is both stepping into the shoes of the plaintiff's (as legal representative of the father) and his deceased uncle(2nd defendant/successful bidder in the court auction) and that the petitioner should withdraw or abandon his claim.

26. I am of the view that a highly technical approach of the lower Court is not correct in view of the overall facts and circumstances of the case. Fact

remains that I.A.No.67 of 1995 has to be decided on merits. Consequently, the learned District Munsif Court, Ranipet is directed to dispose I.A.No.67 of 1995.

27. In view of the above, the learned District Munsif Court, Ranipet is directed to take up the case and dispose I.A.No.67 of 1995 within a period of three months from the date of receipt of a copy of this order.

28. The present Civil Revision Petition is allowed with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

26.06.2019

Speaking : Non-speaking order

Index : Yes/No

Internet : Yes/No

kkd

To

The District Munsif Court,

Ranipet, Vellore.

WEB COPY

C.SARAVANAN.J

jen/kkd



C.R.P(NPD) No.440 of 2015
and M.P.No.1 of 2015

WEB COPY

26.06.2019