

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD).No.149 of 2016

Lourthunathan ...Petitioner

Vs

1.Pathinathan

2.David @ Divyanathan

3.Johnadoss

4.Susaimarry

5.Xavier

... Respondents

Prayer:Civil Revision Petition is filed under Article 227 of the Indian Constitution against the fair and decreetal order dated 03.09.2014, made in I.A.No.486 of 2013 in O.S.No.33 of 2013 on the file of the learned Sub Judge, Gingee.

For Petitioner : Mr.T.Sundaravadanam

For Respondent 1 : Mr.T.Dhanasekaran

Respondents 2 to 4 : No Appearance

ORDER

The above Civil Revision Petition is filed challenging the dismissal of an application to reject the plaint filed by the 1st defendant in I.A.No.486 of 2018 in O.S.No.33 of 2013, on the ground that the suit is barred by law as well as on the ground there being no cause of action. The facts which are necessary to dispose of the Civil Revision Petition are as follows:

2.The 1st respondent in the Civil Revision Petition has filed a suit claiming partition of his 1/5th share in the suit schedule property. He seeks preliminary decree followed by the final decree proceedings. In the suit, the 1st respondent/plaintiff had submitted that they are converted Christian and the suit property originally belonged to their paternal grandfather one Gutaiyan @ Anthonyamy.

3.The said Gutaiyan had four sons and eighty years back he had died intestate. Therefore it is their contention that on the

death of Gutaiyan, his sons had orally partitioned their property, in which some properties had been allotted to the plaintiff's father Chinnathambi @ Anthonysamy. It is his further case that from out of the income from this ancestral property as well as the contributions of the sons the suit property and other properties had been purchased for the benefit of the joint family and the parties have been treating the same as joint family property and the 1st defendant was managing the property as the Kartha of the joint family.

4.He would further contend that from out of the ancestral property income the 1st defendant had purchased the property in his name and ultimately it is the case of the plaintiff that the suit property has to be partitioned since they are no longer able to remain in joint family. सत्यमेव जयते

5.The 1st defendant on receiving the summons in the above suit has come forward with an application to reject the plaint on the ground that the concept of joint family, co-parcenary right, joint family property etc., are alien to the Christian law.

Therefore the suit framed is not maintainable as it is barred by the Indian Succession Act, 1956.

6. In the counter affidavit filed by the plaintiff, he would state that they were only converted Christians and therefore provisions of Hindu Succession Act would only apply and the Christian Law would not apply.

7. The learned Subordinate Judge, Gingee, had dismissed the application on the ground that the issue as to whether the plaintiff is governed by the Christian Law has to be decided only at the time of the trial. Challenging the same the revision petitioner is before this Court.

8. Mr. T. Sundaravadanam, learned counsel for the revision petitioner would contend that even a mere reading of the plaint would demonstrate the fact that the plaintiff and the defendants are Christians and by no stretch of imagination the concept of Hindu Succession Act would apply to the Christians.

9. The counsel would also produce an additional typed set of papers in which he has produced an affidavit filed by the plaintiff

seeking to withdraw the suit O.S.No.33 of 2013, with liberty to file a fresh suit. In this affidavit, the plaintiff has categorically admitted that they are Christians for generations. In the light of the above he would contend that such a suit cannot be allowed to continue.

10.He would rely upon the Judgement of the Honourable Supreme Court in ***Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by Lrs.*** Dated **13.03.2019**, passed by the ***Honourable Supreme Court***, where the Honourable Supreme Court has discussed and narrated the provisions of Order VII rule 11 of the Civil Procedure Code.

11.Per contra, Mr.Dhanasekaran, learned counsel for the respondent would argue that these are the issues that can be taken up during Trial. That apart, the plaintiff has already filed an application to withdrew the suit with liberty to file a fresh suit which has been opposed by the by the 1st defendant.

12. Heard the counsel and perused the documents. It is an admitted fact that the plaintiff and the defendants are born Christians and their ancestors had converted to Christianity long ago. The rules of succession that govern Indian Christians are as per the Indian Succession Act. The provisions of Section 2(d) of the Indian Succession Act would read as follows:

"(d) "Indian Christian" means a native of India who is, or in good faith claims to be, of unmixed Asiatic descent and who professes any form of the Christian religion;"

13. The provisions of Section 2 of the Hindu Succession Act, 1956 would state as follows:

"2. Application of Act-

(1). This Act applies-

(a). to any person, who is a Hindu by religion in any of its forms or developments including a Virsashaiva, a Lingayat or a follower of the Brahma, Prarthana or Arya Samaj.

(b). To any person who is a Buddhist, Jaina or Sikh by religion; and

(c)to any other person who is not a Muslim, Christian, Parsi or Jew by religion unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed. Explanation.- The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:-

(a)any child, legitimate or illegitimate, both of whose parents are Hindus, Bddhists, Jainas or Sikhs by religion;

(b)any child, legitimate or illegitimate one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged.

(c)any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

(2)Notwithstanding anything contained in Sub-Section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3)The expression "Hindu" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this Section. STATE AMENDMENTS Pondicherry: In Section2, after Sub-Section91), nothing contained in this Act shall apply to the Renouncants of the Union territory of Pondicherry."

14. Therefore it is clearly evident that Christians have been kept away from the ambit of the Hindu Succession Act. The Hindu Succession Act recognises ancestral properties, Coparcenary right. It also recognises the concept of joint family property. These provisions are totally alien to the Indian Succession Act, where the rules of succession are governed strictly by the terms of the Act. Such been a case the entire suit which has been filed by the 1st respondent/plaintiff is that the properties are joint family properties, the 1st defendant is functioning as a Kartha and also the properties have been purchased from out of the ancestral property incomes.

15.As rightly pointed out by the counsel for the petitioner the suit is clearly barred by law and does not possess necessary cause of action. The Honourable Supreme court in the Judgement cited above has relied on the Judgement in **Ram Singh Vs. Gram Panchayat mehal Kalan** reported in **(1986) 4 SCC 364**, stating that where the suit is barred by law, the plaintiffs cannot be allowed to circumscribe the provisions by astute drafting and thereby giving colour of cause of action to the suit. In the instant case the plaintiff appears to have taken a defense that their ancestors are Hindus and therefore the rule of Hindu Succession Law would be applicable to that matter is totally perverse.

16.The pleadings would show that the suit lacks cause of action and barred by provisions of Indian Succession Act and there is no necessity to make the parties undergo the trial and tribulation by going through a trial. The learned Judge ought to have reject the plaint but has accepted the same, the order suffers from perversity. The plaint in O.S.No.33 of 2013, on the

file of the Subordinate Judge, Gingee, stands rejected.

The Civil Revision Petition is allowed on the above lines.

There shall be no order as to costs.

12.04.2019

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Index : Yes/No
Speaking order/non-speaking order

To,
The Subordinate Judge,
Gingee.



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P.T.ASHA, J.,

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