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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 12.03.2019

DELIVERED ON : 16.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No.2059 of 2015

K.Kugan

.. Petitioner

Vs.

1.K.J.Shiva Arudhra @ K.Siva Kumar

2.K.Karunamoorthy

.. Respondents

Prayer: This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.9 of 2015 in O.S.No.28 of 2014 on the file of the learned 1st Additional District and Sessions Judge (PCR), Thanjavur dated 20.07.2015.

For Petitioner

: Mr.M.P.Senthil

For 1st Respondent

: Mr.M.Saravanan

For 2nd Respondent

: Dismissed

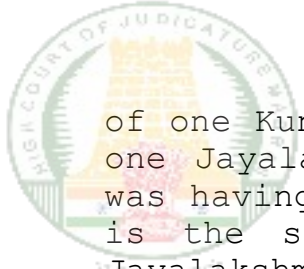
ORDER

Heard Mr.M.P.Senthil, learned counsel appearing for the petitioner and Mr.M.Saravanan, learned counsel appearing for the first respondent.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.9 of 2015 in O.S.No.28 of 2014 dated 20.07.2015 on the file of the learned 1st Additional District and Sessions Judge (PCR), Thanjavur.

3.The petitioner herein is the first defendant, the first respondent herein is the plaintiff and the second respondent herein is the second defendant in the suit. The first respondent herein has filed a suit in O.S.No.28 of 2014 for a prayer of partition of 1/3rd share in the suit property and for permanent injunction. In that suit, the petitioner herein has filed a petition in I.A.No.9 of 2015 under Order 7 Rule 11 of C.P.C., to reject the plaint. The trial Court has dismissed the petition. Against the order, the petitioner has come forward with this revision petition.

4.On the side of the petitioner, it is stated that a suit for partition was filed by the plaintiff who has no right over the property. It is stated that the property is an ancestral property



of one Kunjian and when his wife was alive, this Kunjian has taken one Jayalakshmi who was already married to some other person and was having a son through her first husband and that the petitioner is the son of Kunjian through his first wife and Kunjian and Jayalakshmi gave birth to the second respondent. Even in the plaint itself, the plaintiff has admitted that he was the son of Jayalakshmi through one Karuppiyan. The plaintiff is not even an illegitimate son of Kunjian and Kunjian is not his biological father and he cannot be a legal heir of Kunjian. The second respondent is the illegitimate son of Kunjian and that the plaintiff cannot claim any share in the property. It is stated that already partition was over and the properties were settled between the legal heirs of Kunjian and prayed the revision petition to be allowed.

5. On the side of the first respondent, it is stated that after the death of Karuppiyan, Jayalakshmi married Kunjian and they got second defendant and that Kunjian has executed a registered settlement deed dated 27.02.2003 in favour of the plaintiff and his brother, the second defendant and in that settlement deed, the plaintiff/first respondent herein is clearly mentioned as the son of Kunjian and the plaintiff was treated as one of the sons of Kunjian even during his lifetime. The plaintiff used to treat Kunjian as his own father. The first defendant is the son of the first wife of Kunjian and he is trying to disturb the possession of the plaintiff/first respondent and the first respondent was forced to file a partition suit.

6. In the written statement, the first defendant has taken a stand that the plaintiff is not the son of Kunjian and he is not a legal heir to get a share in the ancestral properties of Kunjian and that the first defendant/petitioner is Kunjian's own son and that mere description of the first respondent as Kunjian's son in the settlement deed is just to denote that the plaintiff lived under the same roof with Kunjian and this description cannot confer any title and that the plaintiff has filed this petition only to drag on the case and prayed the revision to be dismissed as the suit is not maintainable.

7. A perusal of the records reveals that admittedly the first respondent is the son of one Karuppiyan. Kunjian is not the biological father of the plaintiff. But the suit is filed not only for partition but also for a prayer of injunction with regard to the first schedule of the property. The first respondent is claiming the first schedule of property through a settlement deed executed by one Kunjian. The validity of the settlement deed is to be decided in the suit. These facts can be decided only after the trial of the suit. The petitioner can raise all his objections, in his written statement and also at the time of trial. Hence, rejection of the suit at this juncture is not necessary.



8. In the above circumstances, there is nothing sufficient enough to interfere in the order passed by the trial Court. This Civil Revision Petition is dismissed and the order passed in I.A.No.9 of 2015 in O.S.No.28 of 2014 dated 20.07.2015 on the file of the learned 1st Additional District and Sessions Judge (PCR), Thanjavur is confirmed. No Costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

Mrn

To

1. The 1st Additional District and Sessions Judge (PCR),
Thanjavur.

+1CC TO MR.R.SUBRAMANIAN, Advocate Sr. No.61558

+1CC TO MR.M.P.SENTHIL, Advocate Sr. No. 61453

C.R.P. (PD) (MD) No.2059 of 2015

SV2 (CO)

TR (10.05.2019) 3P 4C