



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on ::08.02.2019

Delivered on:: 20.03.2019

CORAM :

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THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P. (MD) (PD) .No.2764 of 2018

and

C.M.P (MD) .No.12097 of 2018

G.Sathishkumar : Petitioner/Proposed Party-2/Defendant No.63

Vs.

1.V.Karthick : 1st Respondent/Petitioner/Plaintiff

2.G.Vijayakumar : 2nd Respondent/1st Respondent/ 1st Defendant

S.Ganesan (died)

3.M.Sethuraman

4.Subramani @Dhanasekaran

5.Manickam

6.Ramalingam

7.Mohana

8.Rasathi

9.Subramani Asari

10.M/s.Selvi Electronics, No.20, Kavalkara Street, Woraiyur,
Tiruchirappalli 620 003

11.Anusuya

12.Shanmugam

13.Mahamuni

14.Kuttiyamma

15.Prabhakaran

16.Gowri

17.Sivakumar

18.Nagalakshmi

19.Shobana

20.Shri Udaya Singh Settu

21.Thenmozhi

22.Muthulakshmi

23.Pitchaiammal

24.Rukumani

25.Raja Yogi

<https://hcservices.ecourts.gov.in/hcservices/>

26.SOKKIRAMAN

27.Navaneethakrishnan



- 28.Rasathi
- 29.Russia @Kumar
- 30.Anguraja
- 31.Bai Amma
- 32.Kalpana
- 33.Nagalingam
- 34.Tea Shop Sekar
- 35.Lakshmi
- 36.Chitra
- 37.Periyasamy
- 38.Settu
- 39.Murugesan Chettiyar
- 40.Satheesh
- 41.R.Sethuraman
- 42.Sekar
- 43.Akila
- 44.Hemavathi
- 45.Ganesan
- 46.K.Gobinath
- 47.Radhai Rengaraj
- 48.Kesavan
- 49.Ramachandran
- 50.Vijayakumar
- 51.Nagarajan
- 52.Prabhakaran
- 53.Jabbar
- 54.Malar Mannan
- 55.Raghavan
- 56.Muthoot Finance Limited
represented by its Branch Manager
- 57.Kumar
- 58.Babu
- 59.Airtel
represented by its legal head
Seewari Steemet -1045
3rd and 4th floor,
Avinashi Main Road,
Coimbatore-18
- 60.Pappathi
- 61.Sekar

(Respondents 3 to 61 are set exparte before the trial Court)

: Respondents/Respondents/Plaintiffs

PRAYER: The Civil Revision Petition has been filed under Article 227 of the Constitution of India against the fair and decreetal services. <https://hccourtservices.tn.gov.in/hccservices> I.A.No.71 of 2011 in O.S.No.10 of 2011 dated 01.03.2017 on the file of the III Additional District Court, Tiruchirappalli.



For Petitioner : Mr.R.Baskaran
For Respondents No.1 : Mr.Raguvaran Gopalan
For R2 : No Appearance

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order passed in I.A.No.71 of 2011 in O.S.No.10 of 2011 on the file of the III Additional District Court, Tiruchirappalli.

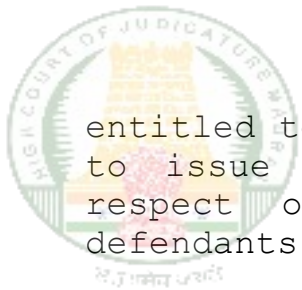
2.The brief facts of the case are as follows:

i.The suit 'A' schedule properties are the absolute and exclusive properties of one Govindasamy and on his demise, the same devolved equally upon his wife Kamalathammal and his son Vijayakumar who is the 1st defendant in the suit.

ii.The suit 'B' schedule properties are the self acquired properties of Kamalathammal having been purchased by her under various sale deeds and she was in exclusive possession and enjoyment of the said properties. Kamalathammal was doing milk business independently and out of such business income and Sridhana from her parents, she has purchased 'B' schedule properties. The said Kamalathammal, while in a sound and disposing state of mind, had executed a Will on 14.03.1990 bequeathing the properties in favour of her grandson / plaintiff namely, V.Karthick, who was a minor and on demise of the said Kamalathammal on 20.05.2010, the said Will came into effect. Even though the plaintiff was a minor on the date of execution of the Will, he had attained majority now.

iii.The said Will would show that the 1st defendant namely Vijayakumar is the adopted Son of Govindasamy and Kamalathammal. Kamalathammal at the time of executing the Will bequeathed the properties in favour of the plaintiff herein, who was represented by his father / guardian. Under those circumstances, neither 1st defendant nor the 2nd defendant are entitled to the said properties. Be that as it may, the defendants 1 and 2 have entered into a partition on 21.07.2010 in respect of the suit schedule properties. The said partition is not binding on the plaintiff.

iv.In the suit 'B' Schedule properties, defendants 3 to 61 are tenants and on demise of said Kamalathammal, the plaintiff being the testamentary heir is entitled to 'B' Schedule properties and he is entitled to collect the rent. On demise of Kamalathammal, the plaintiff is entitled to half share over the 'A' schedule properties. The defendant 3 to 61 are the tenants in respect various portions of the suit 'B' schedule properties and were paying the rent directly to Kamalathammal till her death. As per the registered Will dated 14.03.1990, they are liable to pay the rent to the plaintiff directly as he alone is entitled to the properties as per the registered Will dated 14.03.1990. The defendants 1 and 2 are not



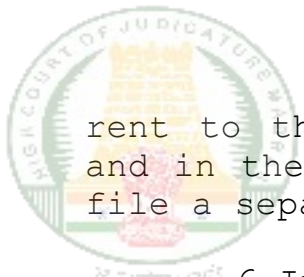
entitled to receive the rent. Thereafter, the plaintiff was forced to issue a legal notice on 25.09.2010 demanding partition in respect of 'A' schedule properties and also requested the defendants 3 to 61 to pay the rent directly to the plaintiff.

v. The allegation of the plaintiff is that the statement that one Ganesan was taken and maintained as the foster son and subsequently adopted as per law is false and denied. Ganesan is neither the foster son nor the adopted son. The further allegation is that Kamalathammal has no source of income and the suit 'B' schedule properties were purchased out of joint family income and the statement that the Kamalathammal was doing business is false and denied. Aggrieved over the same, the plaintiff filed a suit in O.S.No.10 of 2011 before the learned III Additional District Judge, Trichy for a declaration that the Will executed by Kamathammal is the last Will valid and true and a preliminary decree for partition against the defendants 1 and 2 divide the 'A' Schedule properties into two equal shares and to put the plaintiff in separate possession of the suit 'A' schedule properties and for mandatory injunction directing the defendants 3 to 61 to pay the rent to the plaintiff in respect of 'B' schedule properties.

3. Pending suit, I.A.No.71 of 2011 was filed by the plaintiff seeking to grant leave for the petitioner to file a suit for possession afterwards as a separate application.

4. The respondents who are the tenants in the suit filed a counter statement stating that the plaintiff has filed a suit for partition in respect of the 'A' Schedule properties against the defendants 1 and 2 and mandatory injunction against the defendants 3 to 61 in respect of 'B' Schedule properties. The suit was filed before the District Court, Trichirappalli which is the highest forum in the district. The contention stated by the respondents is that the plaintiff can either relinquish any of his claim or seek leave of the Court before the District Court. The plaintiff, having filed the suit, cannot seek leave of the Court to file a suit for recovery of possession to 'B' Schedule properties. A person who wants mandatory injunction, must be in actual possession of the properties. If he is not in actual possession and if he wants mandatory injunction, he must ask for possession in the same suit and not by filing a separate suit. Hence, the contention raised by the respondents is that the relief of mandatory injunction and recovery of possession must be asked simultaneously and not by separate suit.

5. On perusal of oral and documentary evidence, the trial Court has observed that the petitioner has filed a suit for declaration declaring that the Will was executed by Kamalathammal; a preliminary decree for partition against the defendants 1 and 2 to divide the 'A' schedule properties and for a mandatory injunction directing the defendants 3 to 61 to pay the



rent to the plaintiff in respect of the 'B' schedule properties and in the same suit, the petitioner has sought for permission to file a separate suit for possession.

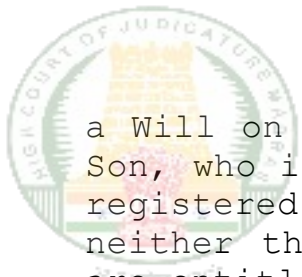
6. In the meanwhile, the defendants in the suit had stated that the plaintiff cannot file such a petition, when the suit is preferred before the District Court which is the highest jurisdiction. The trial Court observing the said issue and also hearing both sides, has given a finding that except the points of jurisdiction of the highest Court of District Court, no other objection has been raised by the defendants and after verifying the provisions under Order 2 Rule 2 of C.P.C, the trial Court allowed the said petition filed by the first respondent herein/plaintiff.

7. Aggrieved against the said order, the petitioner/63rd defendant has preferred this Civil Revision Petition.

8. In the grounds of revision, the petitioner has stated that the plaintiff has not given any explanation in his plaint that how he was disabled in seeking the plea of possession at the time of initiating the suit. Injunction can be opted by the person who has been in possession of the property and hence, the relief of possession and injunction ought to have been sought simultaneously and not separately. The other grievance raised by the petitioner is that the order of granting leave by the Court should be supported with valid reasons and not an automatic one. The explanation in Civil Procedure Code for Order II Rule 2 provision 3 that relief of possession is not an independent separate relief and it goes with main relief. He further stated that if the 1st respondent succeed the case, he will automatically get right over the properties, but when this petition is allowed without looking into the merits, the right of the opposite parties to plea adverse possession ousted out as against the 1st respondent/plaintiff and the petitioner will be handicapped.

9. On the whole, the grounds raised by the petitioner are that when a person sought for mandatory injunction, he must be in actual possession. If he is not in actual possession, but he wants mandatory injunction, he must ask for possession in the same suit and not by filing separate suit. Hence, he prays to set aside the decreetal order passed in I.A.No.71 of 2011.

10. In I.A.No.71 of 2011, the learned counsel for the 1st respondent/plaintiff had contended that 'A' schedule properties are the absolute and exclusive properties of Govindasamy and after his demise, the said properties devolved upon by Kamalathammal and his Son Vijayakumar, who is the 1st defendant in the suit. Hence, Kamalathammal is entitled to $\frac{1}{2}$ share in the 'A' schedule properties. 'B' Schedule properties are described as self acquired properties of Kamalathammal as she has purchased under various sale deeds. Kamalathammal had purchased the 'B' schedule properties by doing milk business. The said Kamalathammal executed



a Will on 14.03.1990 bequeathing the said properties to her grand Son, who is the plaintiff/ respondent herein. The said Will also a registered one and it came into effect on 20.05.2010. Hence, neither the first defendant nor the second defendant in the suit are entitled to the said properties covered under 'B' Schedule.

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11.The contention raised by the respondents is that when the suit has been filed by the plaintiff for mandatory injunction and also claiming right over the rent which is derived from 'B' schedule properties, he can very well seek relief in the same suit and there is no reason stated by him for filing separate suit for possession.

12.The grievance of the petitioner herein is that when two reliefs have been sought for by the plaintiff and seeking leave for filing separate suit for possession afterwards, in which, he has not stated any valid reason. It is also vehemently argued by the petitioner with Order 2 Rule 2 C.P.C.

13.The provisions of Order 2 Rule 2 C.P.C reveal that every fact which will be necessary for the plaintiff to prove, in order to support his right to judgment would be cause of action. Constructive *res judicata* if plaintiff is entitled to larger relief based on same cause of action, he is not entitled to split up relief.

14.On the other hand, the learned counsel for the respondents has quoted the case law ***in C.R.P(PD).No.1872 of 2016 (Uniworld Logistic Private Limited Vs.Indev Logistics Private Limited)*** in which, paragraph 16 reads as follows:

"16.The object of Order II Rule 2 of Code of Civil Procedure is to prevent the petitioner being vexed with same action twice. This is with respect to the same cause of action. Secondly, it is meant to prevent the respondent from clubbing the claims and remedies on the same cause of action. Therefore, the intention is to prevent a party from making different claims at different points of time based upon the very same cause of action. Thus there is no bar in filing different suits between the same parties when cause of action is different from the one with other....."

15.The cause of action of the suit and the applicability of Order 2 Rule 2 C.P.C., has been very much discussed in the above said case. The decision in the said case is arrived based on the cause of action in both the suits are different. In the said order, it has been stated that if the cause of action in both suits are different, the subsequent suit is maintainable. If both suits are same, then leave can be granted.



16. I have heard the learned counsel appearing on either side.

17. The 1st respondent herein/petitioner in I.A.No.71 of 2011 regarding the relief of possession, he is seeking leave to file separate application. On the other hand, the petitioner herein who is aggrieved against the order of the trial Court in granting leave to the 1st respondent/petitioner to file a separate suit for possession contended that when the cause of action in the suit is for declaration with regard to the Will and also claiming right over the collection of rent from defendants 3 to 61 and also for possession, the 1st respondent/plaintiff need not ask for leave of the Court to file a separate suit for possession. It is also observed that the 1st respondent/plaintiff has preferred the suit for the relief of declaration of the Will and seeking possession of 'A' Schedule properties. Hence, when the 1st respondent/plaintiff claims the relief of declaration that the Will was executed by Kamalathammal is valid and true one and thereby claiming right with regard to the rent and possession of 'B' Schedule properties, the plaintiff cannot file a separate suit afterwards for possession. Whereas, the petitioner herein has contended that when the plaintiff is seeking for a direction for payment of rent, the relief of possession need not be filed by way of separate suit, since the cause of action in the suit is based on the Will.

18. In view of the above discussion, this Court finds that there is no specific reason has been stated by the 1st respondent/plaintiff in I.A.No.71 of 2011 to grant leave from the Court to file a suit for possession afterwards as a separate application and the aforesaid reason stated by the petitioner herein appears to be a valid one. Hence, the order passed in I.A.No.71 of 2011 in O.S.No.10 of 2011 on the file of the learned III Additional District Court, Tiruchirappalli is set aside. Accordingly, this Civil Revision Petition is allowed. No Costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar (CS)



To
The III Additional District Judge, Tiruchirappalli.

+1 CC to M/s.K.PRABHAKAR, Advocate (SR-55523[F] dated
20/03/2019)

+1 CC to M/s.R.BASKARAN, Advocate (SR-55902[F] dated
22/03/2019)

msa

order made in
C.R.P. (MD) (PD) .No.2764 of 2018
and
C.M.P (MD) .No.12097 of 2018
20.03.2019

KM/ (02.04.2019) 8P 4C