



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE **R. PONGIAPPAN**

CRP(MD) No.1178 of 2019

Pattammal

... Petitioner

versus

1. Vembaiyan
2. Selvaraj
3. Kalarani
4. Veeraiyan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 28.06.2019 in unnumbered suit in diary No.6910 of 2019 on the file of the learned Principal District Judge, Thanjavur.

For Petitioner : Mr.G.Karnan

ORDER

The plaintiff in the unnumbered suit in diary No.6910 of 2019 is the revision petitioner herein. She filed this petition seeking a direction to the learned Principal District Judge, Thanjavur, to number the unnumbered suit in diary No.6910 of 2019, which is pending on its file.

2. Before the trial Court, the petitioner herein filed the suit, seeking the relief of partition.

3. It is the case of the plaintiff/petitioner herein that the suit properties are ancestral and joint family properties of the plaintiff and defendants. The 'A' Schedule property is owned by the plaintiff, after inheriting the same from her mother Rathinathammal. The plaintiff's mother Rathinathammal had three daughters through her husband Thulasiayya, viz., Pattammal (the plaintiff herein), Anjammal and Ellambal. The plaintiff's father Thulasiayya died in the year 1970 and the plaintiff's mother Rathinathammal died intestate in the year 1980. After the demise of Thulasiayya and Rathinathammal, there was partition among the daughters of Rathinathammal and Thulasiayya in the year 1995, in which, A schedule property was allotted in favour of the plaintiff herein and B schedule property was allotted to her sister



Anjammal. In fact, the said Anjammal died intestate without issues.

4. It is the further claim of the plaintiff that her sister Anjammal was with the plaintiff till her death and she died intestate on 15.11.2017 leaving the plaintiff as class-II legal heir to succeed her property. Thereafter, the B schedule property had also gone to the hands of plaintiff since she is the class-II legal heir of Anjammal, who has left no class-I legal heir.

5. It is the further case of the plaintiff that by utilizing her old age and other circumstances, the second defendant has fraudulently obtained a settlement deed dated 24.09.2004 from the plaintiff. In fact, the plaintiff is not having any intention to execute the settlement deed in favour of the second defendant. Only in the said circumstances, the plaintiff filed the suit for the relief as referred to above.

6. In the said circumstances, the learned Principal District Judge, Thanjavur, while at the time of returning the plaint, raised a query as to how the suit is maintainable, after the execution of settlement deed specifically executed by the plaintiff in favour of second defendant and further, without setting aside the said settlement deed.

7. In this regard, the learned counsel appearing for the petitioner would contend that in the plaint, there is a pleading that the settlement deed executed by the plaintiff is a fabricated one and thereby, the plaintiff is entitled to the relief of partition as prayed for in the suit. Further, the learned counsel relied upon the Judgment of this Court rendered in the case of **N.Krishnaveni and another vs. G.Tharmaraja and others**, reported in **CDJ 2018 MHC 6319**, wherein, it was held as follows:

"9. At the time of numbering the plaint, the Court has to see whether the plaint contains the cause of action but it cannot consider whether the cause of action pleaded is correct and true. It is up to the defendants in the suit to come out with an application to reject the plaint under Order 7 Rule 11 of C.P.C., if the cause of action is not available. On perusal of the plaint, it is clear that the cause of action is pleaded as required in the above rules and thus, the Court below is wrong in returning the plaint.

10. The nature of transaction and as well as the agreement between parties cannot be decided at the time of numbering the plaint but the same has to be decided on the basis of defence to be taken by the defendants, thus, the second ground for return is also not proper at this stage.

<https://hcservices.ecourts.gov.in/hcservices/> 11. The Court below returned the plaint even after representing with explanation and without considering the



explanation regarding the prayer in the plaint is totally incorrect and not proper. It is always for the plaintiffs to make out a prayer but the granting of relief is always subject to proof of right and entitlement to get the same. In other words, it is for the defendants to take available defence for not granting the relief and the Court cannot act as defendants or on behalf of defendant while numbering the plaint. The Court below has even failed to consider the relationship of parties and the nature of oral agreement, which requires a decision on merits with valid defence from the defendants, particularly when the nature of reply given to the suit notice admitting the money transaction. Thus, the third ground also not sustainable. When the request was made on behalf of the plaintiffs to take the plaint in open court it ought to have taken up for hearing and after affording an opportunity of hearing the Court below should have passed order either numbering or returning the plaint. The non-consideration of the said request but simply returning the plaint again and again is not proper and no useful purpose would be served."

8. From the above decision, it is clear that simply returning the plaint again and again after raising query as to how the suit is maintainable is unnecessary. Therefore, the learned Principal District Judge, Thanjavur, has to follow and act in accordance with the directions referred in the above decision.

9. Accordingly, this Civil Revision Petition is allowed. The learned Principal District Judge, Thanjavur, is directed to hear the maintainability of the suit filed by the plaintiff in open court and to dispose of the same in accordance with the law laid down already. No costs.

10. The Registry is directed to return the copy of the plaint produced along with CRP to the petitioner for enabling her to produce the same before the trial Court. The plaintiff/petitioner is directed to re-submit the copy of the plaint within one week from the date of receiving the same.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

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

The Principal District Judge,
Thanjavur.



Copy to:

The Section Officer,
ER Section,
Madurai Bench of Madras High Court,
Madurai.

WEB COPY

(The Registry is directed to return the copy of the
plaint produced along with CRP to the petitioner)

+1 CC to M/s.G.KARNAN, Advocate (SR-77126[F] dated 24/07/2019)

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