



WEB COPY

C.R.P(MD)No.2132 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2019

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

C.R.P (MD)No.2132 of 2019

and

C.M.P. (MD)No.11189 of 2019

S.Selvakumar

... Petitioner /Petitioner /1st
Defendant

Vs.

1.V.Arulpandi

2.V.Sundarraaj

... Respondents /Respondents /
Plaintiffs

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decretal order dated 14.08.2019 made in I.A.No.310 of 2018 in O.S.No.334 of 2015 on the file of the Principal District Munsif Court, Tenkasi.

For Petitioner : Mr.J.Senthil Kumaraiah

For Respondents : Mr.B.Anandan

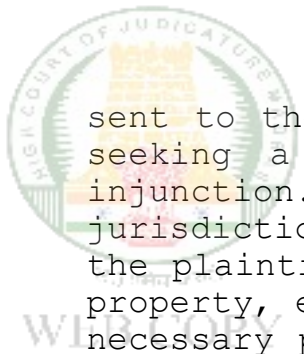
ORDER

This Civil Revision Petition is filed against the order dated 14.08.2019 made in I.A.No.310 of 2018 in O.S.No.334 of 2015 on the file of the Principal District Munsif, Tenkasi.

2. The revision petitioner herein is the first defendant and the respondents are the plaintiffs in the suit. The respondent filed a suit in O.S.No.334 of 2015 seeking for a prayer of bare injunction. In that suit, the petitioner herein / first defendant filed a petition in I.A.No.310 of 2018 under Order -7 Rule - 11 r/w Section 151 of the Code of Civil Procedure, to reject the plaint. That petition was dismissed by the trial Court. Against which, the revision petitioner preferred this Civil Revision Petition.

3. Brief substance of the petition in I.A.No.310 of 2018 is as follows:

The respondents are the sons of the second wife of Vaithiyalinga Nadar, who is the paternal grand-father of the defendants. The suit properties are the ancestral properties of Vaithiyalinga Nadar. The respondents created some documents and tried to construct a building in the suit property, a notice was



sent to them on 08.06.2015. At this stage, the plaintiffs without seeking a prayer for declaration, filed a suit only for bare injunction. The value of the property is beyond the pecuniary jurisdiction of the Court. In the plaint itself in paragraph No.3, the plaintiffs had admitted that the suit property is the ancestral property, enjoyed by both defendants and the plaintiffs, but all the necessary parties are not impleaded in the suit. In the paragraph No.4, it is stated that the properties were divided, but the particulars of that partition were not mentioned in the plaint, but there is no wordings regarding the partition in the documents registered as document Nos. 551/2002 and 552/2002 and the suit is bad for non-joinder of necessary parties and the suit is beyond the pecuniary jurisdiction of the Court and for non-seeking for a relief of declaration and hence the suit is to be rejected.

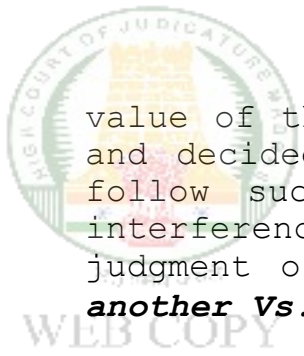
4. Brief substance of the counter is as follows:

Sufficient court fee was paid, thereafter only, with the motive to delay the trial, the petitioner / first defendant has come forward with the petition. If there is any deficiency in the payment of Court fee, sufficient opportunities has to be given to the plaintiffs to pay the deficit Court fee, then only the petition can be decided. The suit property originally belonged to the grandfather of both the defendants and the plaintiffs, then, it was enjoyed by the father of the plaintiffs and the defendants viz., Vaithiayalinga Nadar and the said Vaithiayalinga Nadar settled the property in favour of the plaintiffs on the basis of that document the plaintiffs and the father alienated many properties, when already partition was effected, there is no necessity to implead other persons. To avoid future litigations, the said Vaithiyalinga Nadar executed separate gift deeds to his legal representatives and hence this petition is to be dismissed.

5. After hearing both sides, the trial Court dismissed the petition. Against which, the petitioner has come forward with this Civil Revision Petition on the following grounds:

5.1.The trial Court failed to frame an issue regarding the pecuniary jurisdiction and the trial Court failed to consider that there is absence of relief of declaration and there is non-joinder of necessary parties and non-filing of separate suit for individual rights of the plaintiffs. The respondent has stated that the suit properties are joint family properties, other legal heirs are not impleaded, though in Execution Proceedings notice was issued much earlier before the filing of the suit, the respondent failed to seek for a relief of declaration, the suit is based on two different gift deeds and for individual rights, separate suits have to be filed.

6. On the side of the respondents, it is stated that the Court <https://hccases.courts.mh/judgeservices/> have directed the Taxing Officer to determine the



value of the properties and Court fees payable, called for report and decided the pecuniary jurisdiction, on that basis, failure to follow such procedure and findings without any basis, warrants interference under Article 226 of the Constitution of India. A judgment of this Court published in **2019 (6) CTC 1 [Indirani and another Vs. Raja @ Annadurai]** is cited.

7. On the side of the respondents, it is further stated that P.W.1 was examined in chief and at the time of cross-examination of the plaintiffs, the petitioner has come forward with this petition and in the deposition of the petitioner, the petitioner has admitted that the petitioner is disputing only the territorial jurisdiction and not the pecuniary jurisdiction and that the petitioner did not question the pecuniary jurisdiction. Regarding the question of pecuniary jurisdiction, the trial Court can frame an issue, decide the same as a preliminary issue.

8. The other ground raised by the petitioner is that the suit property is the ancestral property as per the wordings of the plaintiffs themselves. In the plaint, at paragraph No.3, it is stated that the property is the ancestral property of Vaithiyalinga Nadar and the said Vaithiyalinga Nadar had two wives, the first wife by name Periyatha was having two sons i.e. Subramanian @ Chelladurai (second defendant) and Thangam, defendant No. 1/ Selvakumar/ revision petitioner and defendant No.3 / Sankar are the sons of the second defendant / Subramanian @ Chelladurai. The second wife of Vaithiyalinga Nadar by name Seeniammal had four male issues (1) Periyasamy (2) Arulpandi (first plaintiff) (3) Sundarraaj (second plaintiff) (4) Karthick and two female issues (1) Padmavathi Devi (2) Devi and the suit properties were enjoyed by the plaintiffs and the defendants together, it is alleged that there was a family partition and the suit property belonging to the plaintiffs through a gift deed.

9. It is seen that the claim of the plaintiffs is that there was already a partition in the family what were the properties available for partition and what were the properties allotted to each member of the family was not described in the plaint. It is an admitted fact that the suit properties are the ancestral properties and the defendants are also legal heirs of Vaithiyalinga Nadar. The defendants sent a legal notice to the plaintiffs questioning their title even then the plaintiffs did not seek for a relief of declaration. When partition took place what are all the properties allotted to the defendants and the plaintiffs were not stated in the plaint.

10. In the above circumstances, the defendants have targeted only co-shares and an injunction order against co-sharers cannot be obtained, unless partition is proved. To prove the partition all the legal representatives of Vaithiyalinga Nadar are to be impleaded



as parties. In the above circumstances, there is no necessity to reject the plaint and an opportunity for the plaintiffs either to amend the plaint or to file a fresh suit on the same cause of action is to be given.

11. With the above observations, this Civil Revision Petition is dismissed and the order dated 14.08.2019 made in I.A.No.310 of 2018 in O.S.No.334 of 2015 on the file of the Principal District Munsif Court, Tenkasi. is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

The Principal District Munsif,
Tenkasi.

C.R.P(MD)No.2132 of 2019
20.12.2019

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