

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.10.2020

PRONOUNCED ON : 03.11.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD).No.4594 of 2012

and

M.P.No.1 of 2012

Mrs.Shantha

... Petitioner

Vs.

1. R.Chellappa alias Raju
2. R.Malliga
3. Rafiq
4. Sekar
5. Raja
6. Sri Sri Desika Gnanasambanda Paramachariyar
Swamigal,
Dharmapuram Adinam and Family Trustee
and Kumarakattalai Subramaniaswami
Devesthanam, Dharmapuram,
Myladuthura,
D.Mu.Elaka

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and executable order passed in I.A.No.80 of 2012 in O.S.No.42 of 2011 on the file of the Additional Sub Court, Myladuthurai dated 06.09.2012.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.A.Muthu Kumar for R1

No appearance for R2, R3,
R4 and R6

ORDER

This Civil Revision Petition has been filed by the petitioner/plaintiff against the dismissal of her application filed in I.A.No.80 of 2012 in O.S.No.42 of 2011 on the file of the Additional Sub Judge, Myladuthurai dated 06.09.2012.

2. The petitioner herein had filed a suit in O.S.No.42 of 2011 on the file of the Additional Sub Judge, Myladuthurai for the relief of partition and separte possession. During pendency of the said suit, the petitioner herein had filed an application in I.A.No.80 of 2012 under Order 18 Rule 3 of CPC to direct the first respondent/ first defendant to lead evidence first. The learned Additional Sub Judge, Myladuthurai by the order dated 06.09.2012 had dismissed the said petition without costs. Feeling aggrieved, the petitioner /plaintiff has filed the present Civil Revision Petition.

3. Heard Mr.V.Vijay Shankar, the learned counsel for the petitioner/plaintiff and Mr.A.Muthu Kumar, the learned counsel for the first respondent/ first defendant.

4. The learned counsel for the petitioner/plaintiff has submitted that the petitioner had filed a suit in O.S.No.42 of 2011 on the file of the Additional Sub Judge, Myladuthurai claiming partition of 1/3rd share in the suit property as the suit originally belonged to her parents and they died intestate leaving behind her and the respondents 1 and 2 as their legal heirs. He further submitted that the first respondent /first defendant had filed a written statement stating that their mother Rajamani Ammal @ Pappaammal had executed a Will dated 02.02.2009 in respect of the suit property in his favour and after the death of their mother, the said Will came into force and he succeeded to the suit property. He further submitted that since the first respondent/ first defendant has taken a stand that their mother had executed a Will and by virtue of the said Will, he became an absolute owner of the suit property, the burden is upon him to prove the fact that the said Rajamani Ammal @ Pappaammal had executed a Will in his favour. He further submitted that if the 1st

respondent/1st defendant proved the said Will, the petitioner/plaintiff may not get share in the suit property and hence, the petitioner had filed an application in I.A.No.80 of 2012 in O.S.No.42 of 2011 under Order 18 Rule 3 of CPC to direct the first respondent/ first defendant to let in evidence first. He further submitted that Order 18 and Rule 3 of CPC gives an option to the plaintiff to reserve her right to adduce rebuttal evidence and hence, the trial court ought to have allowed the application filed by the first petitioner and directed the first defendant to adduce evidence first. He further submitted that contrary to the aforesaid provisions of law, the trial court had dismissed the petitioner's application and therefore, he prayed to allow the Civil Revision Petition and set aside the order passed by the trial court and allow the application in I.A.No.80 of 2012 in O.S.No.42 of 2011.

5. Per Contra, the learned counsel for the first respondent/ first defendant has submitted that as per Order 18 Rule 1 of CPC, the plaintiff has right to begin the case. He further submitted that as per Order 18 Rule 3 of CPC, where the burden of proving of any issues lies on the other party, the party beginning may, at his option, either adduce

evidence on all the issues or reserve it to adduce rebuttal evidence, but, he cannot make a request to the court to direct the defendant to adduce first. He further submitted that the trial court taking into consideration the aforesaid provisions of law has rightly dismissed the application filed by the petitioner and in the said order, this Court need not interfere and therefore he prayed to dismiss the Civil Revision Petition.

6. The procedure for hearing of the suit and examination of witnesses is prescribed under Order 18 of CPC. For disposing of this CRP, it may be relevant to refer to Rule 3 of Order 18 of CPC, which read thus:

“3. Evidence where several issues... Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case”

7. A bare reading of the aforesaid provision of law would show that where there are several issues, the burden of proving some of the issues lies on the other party, the party beginning may, at his option, either adduce evidence in respect of all the issues or he may reserve his right to adduce rebuttal evidence. If he reserved right to adduce rebuttal evidence, he may adduce his evidence on the said issues after the other party has produced all his evidence. Therefore, the petitioner being the plaintiff, she has to adduce evidence first. She may adduce evidence in respect of all the issues or she may reserve the right to adduce rebuttal evidence in respect of the evidence to be produced by the first respondent/ first defendant in respect of the Will. Instead of that she cannot direct the first respondent/first defendant to let in evidence first. Therefore, this court is of the view that the learned trial court has rightly dismissed the application filed by the petitioner/plaintiff. In the said order, this Court does not want to interfere.

8. In the result, this Civil Revision Petition is dismissed. Confirming the order passed by the trial court in I.A.No.80 of 2012 in

O.S.No.42 of 2011 dated 06.09.2012. No costs. Consequently connected
miscellaneous petition is closed.

03.11.2020

Vv

Index :Yes/No

Internet : Yes/No

To

The Additional Sub Court, Myladuthurai



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CRP (PD).No.4594 of 2012 and
MP.No.1 of 2012

P.RAJAMANICKAM.J.,

Vv



Pre-Delivery Order made in
C.R.P(PD).No.4594 of 2012
and
M.P.No.1 of 2012

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03.11.2020