

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 21.09.2020	Delivered on 06-10-2020
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CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD)No. 2305 of 2018

and

C.M.P.No. 14377 of 2018

E.Marimuthu

...Petitioner

Vs.

1.Indirani

2.Amudhavalli

3.Pushpa

4.Valarmathi

.... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order of the III – Additional District Judge, Salem made in I.A.No. 691 of 2017 in O.S.NO. 78 of 2013 dated 07.02.2018.

For Petitioner : Mr.C.Rajasekaran

For Respondents : Mr.V.Sekar

ORDER

The defendant in O.S.No. 78 of 2013, whose application for rejection of plaint was dismissed by the Trial Court has come up with this civil revision petition.

2. The suit in O.S.No. 78 of 2013 was filed by the plaintiffs, who are the sisters of the first defendant therein, claiming that the settlement deed executed by their father in favour of the first defendant is null and void, for declaration that the sale deeds dated 23.05.2005 executed by the defendants 1 to 4 in favour of the 5th defendant are not binding on them and for partition.

3. According to the plaintiffs, the suit properties belonged to a Hindu joint family of Ellappa Mudaliar. The said Ellappa Mudaliar died intestate in the year 2003, leaving behind the plaintiffs and the first defendant as his legal representatives. According to the plaintiffs, after death of Ellappa Mudaliar, they had succeeded to the suit properties. Claiming that Ellappa Mudaliar had no right to settle the coparcenary properties in favour of the first defendant, the plaintiffs sought to impugn the settlement deed said to have been executed by him on 27.02.2002. It is the further contention of the plaintiffs that they would become coparceners along with Ellappa Mudaliar by virtue of Act 39 of 2005.

4. The suit was resisted by the defendants contending that Ellappa Mudaliar having died prior to the coming into force of the amending act 39 of 2005 and the plaintiffs having been married several years prior to the suit, cannot claim as coparceners. It is also the claim of the first defendant that pursuant to the settlement deed of the year 2002, he has become an absolute owner of the property and the plaintiffs cannot claim a share in the suit properties. The suit was taken up for trial and the 3rd plaintiff had filed her proof affidavit as P.W.1.

5. At this juncture, the first defendant has come up with the instant application in I.A.No. 691 of 2017 seeking rejection of plaint, contending that the suit is barred by limitation, the plaintiffs have not paid proper court fee and that the reliefs sought for based on the partition deed dated 29.06.1987 are barred by limitation. The Trial Court, upon a consideration of the application, dismissed the application holding that there were no sufficient grounds for rejecting the plaint and none of the grounds for rejection of the plaint in Order 7 Rule 11 have been made out. The Trial Court also concluded that the suit cannot be termed as an abuse of process of Court. On the said conclusions, the Trial Court dismissed the application. Aggrieved,

the first defendant has come up with this civil revision petition.

6. Heard Mr.C.Rajasekaran, learned counsel for the petitioner and Mr.V.Sekar, learned counsel for the respondents.

7. Mr.C.Rajasekaran, learned counsel for the petitioner would submit that the Patta granted under the Patta Passbook Act would confer title on the first defendant. According to him, the plaintiffs having failed to challenge the Patta granted under the 1983 enactment, cannot claim partition. He would also contend that the relief is claimed based on the basis of the unregistered partition deed dated 29.06.1987 and therefore, the suit is barred by limitation. He would also claim that the 1987 partition is a partition under Section 8 and not under Section 6 and therefore, the claim that the suit properties are coparcenary properties cannot be sustained. The law laid by the Hon'ble Suupreme Court in **Ajit Singh and Another Vs. Jit Ram and Another reported in AIR 2009 SC 199** is also invoked to deny the share of the plaintiffs. Apart from the above, the learned counsel also referred to various provisions of Evidence Act on the question of burden of proof. He would also refer to the proviso to amended Section 6(1), which saves alienations

that has been made prior to the coming into force of the Act 39/2005.

8. In response, Mr.V.Sekar, learned counsel for the respondents / plaintiffs would submit that in view of the latest judgment of the Hon'ble Supreme Court in **Vineeta Sharma Vs. Rakesh Sharma and others dated 11-08-2020** the plaintiffs' case is further strengthened and irrespective of the date of the death of their father, the plaintiffs who are daughters would become coparceners. He would also submit that once the properties are claimed to be a coparcenary properties, the father, Ellappa Mudaliar as a coparcener had no right to execute a settlement deed in favour of his son to the detriment of the other coparceners. He would invoke the principle of law that a coparcener cannot settle the share in the coparcenary property in favour of one of the coparceners or any other person. I have considered the submissions of the learned counsel on either side.

9. I must, at the outset, point out that none of the grounds raised by Mr.C.Rajasekaran, in his detailed written arguments come within a purview of Order 7 Rule 11 of C.P.C. The rejection of a plaint under Order 7 Rule 11 can happen only on certain grounds. Of course, the Court has the power to reject the plaint even on the grounds which do not come within the purview of

Order 7 Rule 11 like, abuse of process of court or other reasons. In the case on hand the suit is simplicitor for partition by the plaintiffs claiming to be coparceners under the amending Act, 39 of 2005. They had impugned the settlement made by the father on the grounds that he had no power to execute such a settlement deed. What is saved under proviso to section 6(1) are only an alienation including a partition or a testamentary disposition. A gratuitous transfer which is otherwise invalid is not saved by proviso to Section 6(1) of the amending Act.

10. In view of the judgment of the Hon'ble Supreme Court in **Vineeta Sharma Vs. Rakesh Sharma and others** the law laid down in **Ajit Singh and Another Vs. Jit Ram and Another** reported in AIR 2009 SC 199 cannot be of any help to the defendant. The Hon'ble Supreme Court has in **Vineeta Sharma Vs. Rakesh Sharma and others** held that irrespective of the date of the death of the father, the daughters of the coparcener would become coparceners. The question, whether the property is coparcenary property or not and whether the settlement deed executed by Ellappa Mudaliar on 27.07.2002 is valid or not, whether the partition said to have taken place on 29.06.1987 between Ellappa Mudaliar and his brothers was

one under Section 6 or under Section 8 are all matters, which have to be decided on evidence. Therefore, I do not think that the first defendant had made out a case for rejection of the plaint. The sales by the defendants 1 to 4 in favour of the 5th defendant are after the cut- off date and therefore, they are not saved by the proviso to Section 6(1) of the Hindu Succession (amendment) Act, 2005.

11. In view of the above, I do not see any reason to interfere with the order of the Trial Court in exercise of the powers under Article 227 of the Constitution of India. Therefore, this civil revision petition fails and it is accordingly dismissed. Consequently, connected miscellaneous petition is closed. No costs.

सत्यमेव जयते

06.10.2020

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Index : Yes/ No
Internet : Yes/ No
Speaking / Non-speaking
To

1. The III – Additional District Judge,
Salem.

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R.SUBRAMANIAN, J.
KKN



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