



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 30.07.2020

CORAM :

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

C.R.P (MD) Nos.2222 and 2223 of 2012

and M.P(MD)No.1 of 2012

WEB COPY

In both Revisions:

- 1.Gangammal
- 2.Chelldurai

... Petitioners/Respondents 1& 2/
Defendants 1 & 2

Vs.

- 1.Shanmugavadivammal (Died)
- 2.Madasamy Thevar
- 3.Vellathai

... Respondents 1 -3/
Petitioners/Plaintiffs

4.Tahsildr,
Kovilpatti Taluk,
Government Office Road,
Kovilpatti.

5.State of Tamil Nadu,
By its District Collector,
Thoothukudi, having his
Office at Collectorate,
Korampallam,
Thoothukudi

...Respondents 4 & 5/Respondents 3 &
4/Defendants 3 & 4

Memo in USR No.4001 dated 29.08.2017 recorded as the first respondent died and R2 and R3 were already on record and recorded as legal heirs of the deceased first respondent Vide Court order dated 20.07.2020)

PRAYER: The Civil Revision Petitions are filed under Article 227 of Constitution of India against the order dated 26.04.2012 passed in I.A.Nos.385 and 386 of 2012 in O.S.No.286 of 2008 on the file of the District Munsif, Kovilpatti.

For Petitioners : Mr.N.Subramanian

COMMON ORDER

The present revisions are preferred by the defendants 1 and 2 in O.S.No.286 of 2008 pending on the file of the District Munsif Court, Kovilpatti, challenging the orders passed in I.A.Nos.385 of 2012 and 386 of 2012 in O.S. No.286 of 2008. The parties are referred to by the rank in the suit.



2. The suit was laid by the respondents 1 to 3 claiming themselves to be the legal heirs of one Sangili Pandiyan and for a decree requiring the third defendant/4th respondent herein to issue a legal heir certificate to that effect. In that suit, the first plaintiff claims that she is a legitimate wife of Sangili Pandiyan. The defendants 1 and 2/the revision petitioners herein also claimed that they are the legal heirs of Sangili Pandiyan and that the first defendant/first petitioner herein is a legitimate wife of Sangili Pandiyan.

3. In their written statement, the revision petitioners have made a counter claim seeking to declare themselves and 4 others as the heirs of Sangili Pandian and for other ancillary reliefs.

4. The matter went to trial and evidence on either side were concluded, and was posted for final arguments of the suit.

5. At that juncture, the plaintiffs/the respondents 1 to 3 herein have filed I.A.No.385 of 2012 for re-opening the case and I.A.No.386 of 2012 for receiving a reply statement to the counter claim made in the written statement.

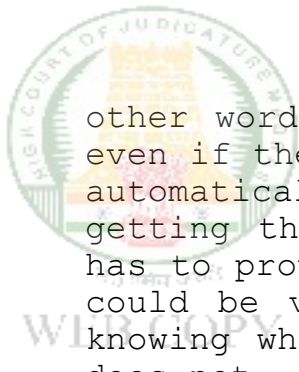
6. It is averred in the affidavits filed in support of I.A.Nos.385 and 386 of 2012 that failure to file reply statement to the counter claim has occasioned due to an inadvertent error. The trial court allowed the two Interlocutory Applications but on payment of Rs.500/-(Rupees five hundred only) each. Accordingly, the case was re-opened and reply statement was allowed to be taken on file.

7. Heard both sides.

8. The learned counsel for the revision petitioners submitted that the trial of the case has concluded and granting the plaintiffs an opportunity to file reply statement to the counter claim at this juncture would only cause great hardship and inconvenience to the revision petitioners.

9. The learned counsel for the respondents would contend that the evidence on either side had been adduced and it is an advertent error that resulted in failure to file a reply statement.

10. It has to be stated candidly that both sides seek identical declaration as the legitimate heirs of Sangili Pandiyan. In particular, it more relates to the status of the first plaintiff and the first defendant as to who among them is the legitimate wife of said Sangili Pandiyan. In other words, for proving that the first plaintiff was the legitimate wife of Sangili Pandiyan, burden of proof is obviously on her, while for proving the first defendant's claim of status through her counter claim it is on the latter. In



other words, both occupy the position of plaintiffs, in the sense, even if the first plaintiff does not prove her status, that does not automatically imply the counter claim should be allowed since for getting the first defendant's status declared, the first defendant has to prove her case. Inasmuch as the evidence has been let in, it could be visualized that both sides would have gone to the trial knowing what they were litigating about. In that sense, this Court does not

consider that there is any error in the orders of the learned District Munsif, Kovilpatti. There is no merit in these revisions.

11. However, it has to be held that such belated filing of petitions would definitely make inconvenience to the parties. That has to be adequately compensated in terms of costs. The cost portions of the orders passed by the District Munsif, Kovilpatti, in I.A.Nos.385 of 2012 and 386 of 2012 alone are modified. The cost is enhanced from Rs.500/- to Rs.1500/-, that the respondents 1 to 3 shall pay a cost of Rs.1500/-each. Except for enhancement of payment of cost, the order of the court below stands unaltered.

12. The learned counsel for the petitioners submitted that differential sum of Rs.2000/-(Rupees two thousand only) now enhanced by this court may be paid to the Advocate Clerks Association in view of the struggle of the Advocate Clerks Association in this Covid-19 time. The respondents 1 to 3 are directed to pay a sum of Rs.2,000/- (Rupees two thousand only) to the Advocate Clerks Association within a period of 10 days from the date of receipt of a copy of this order.

13. Since the suit is of the year 2008, the District Munsif, Kovilpatti, is directed to dispose of O.S.No. 286 of 2008 within a period of two months from the date of receipt of a copy of this order.

14. With the modification as indicated above, the Civil Revision Petitions are disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

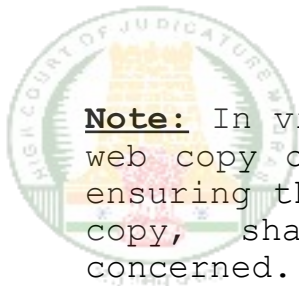
Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

CM



Note: In view of the present lock down owing to Covid-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

WEB COPY

To,

1. The District Munsif,
Kovilpatti.
 2. The V.R.Section,
Madurai Bench of Madras High Court,
Madurai.
- +1 CC to Spl.Govt.Pleader, SR 13445 & 13446

C.R.P (MD) Nos.2222 and 2223 of 2012
and M.P (MD) No.1 of 2012
30.07.2020

AP(07/08/2020) 4P 5C