



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.09.2020

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.R.P. (PD) (MD) No.300 of 2012

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

1.Ganesan
2.Rajendran

... Petitioners/Defendants 19 & 20

vs.

1.Selvi
2.Omana
3.Ganesan
4.Lilly
5.Ambika
6.Veerappan
7.Leela
8.Daisy
9.Vimala
10.Prema
11.Azhagesan
12.Reetha
13.Belgin Prasad Singh
14.Melbin Prasad Singh
15.Palammal
16.Nadarajan
17.Marianesom
18.Devaraj
19.Kannammal
20.Kumar
21.Lawrence
22.Mariapushpam

... 1st Respondent/Plaintiff

... Respondents 2-19/Defendants 1-18

... Respondents 20-22/Defendants 21-23

PRAYER: This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to struck off the plaint in O.S.No.61 of 2011 on the file of Subordinate Judge, Kuzhithurai.

For Petitioners: Ms.J.Anandhavalli

For Respondents: Mr.P.Thiagarajan for RR2 to 7, 9 & 10

: Mr.Brijesh Kishore for Mr.P.Velmurugan for R1



ORDER

The present Civil Revision Petition is filed by defendants 19 and 20 in O.S.No.61 of 2011, now pending on the file of Sub-Court, Kuzhithurai, to strike down the plaint as being abuse of judicial process.

2.The dispute pertains to the estate of a certain Selvanayagam. The plaint in O.S.No.61 of 2011 discloses that the plaintiff is the daughter of one Selvanayagam, that Selvanayagam was married twice, first to the the 18th defendant and then, to the first defendant. According to the plaintiff, the second marriage of Selvanayagam to the first defendant had taken place in 1949. Through his first wife, Selvanayagam had five children, of who, the 15th defendant Natarajan is one. Through his second wife, Selvanayagam had 9 children, who are the plaintiff and defendants the 2 to 10 herein. While so, Selvanayagam died on 07.04.2006, wherein after, succession opened and the plaintiff is entitled to 1/15th share in the suit property. In the plaint, there are 8 schedules of properties listed for partition.

3.The Revision Petitioners herein are defendants 19 and 20 in the said suit. They are the purchasers of separate portions of the property described in schedule no.1. The properties conveyed by their sale deeds is covered in re-survey nos.931/1 to 931/7, which is said to have a total extent of about 11 acres.

4.Their contentions are as below;

- The 15th defendant, Natarajan, son born to Selvanayagam through his first wife, had filed O.S.No.44 of 1976 seeking partition of his 1/7th share in the suit property. Selvanayagam himself was arrayed as the first defendant. It was his contention that the properties were acquired by the joint labour and efforts of Selvanayagam and his sons. It was also held that Selvanayagam's marriage to the first defendant Omana(mother of the present plaintiff) was not true. That suit came to be decreed on 23.03.1978. Preliminary decree for partition was passed.
- Challenging the said decree, Selvanayagam and another filed A.S.No.200 of 1978 and yet, another defendant had filed A.S.No.234 of 1978. Both these appeals were jointly tried and they were dismissed on 17.10.1979, though there was some modification in the share given to the 7th defendant in A.S.No.200 of 1978. So far as Selvanayagam's contention is concerned, his case was rejected and the decree became final as against Selvanayagam.
- Subsequently, Natarajan filed I.A.No.312 of 1996 for passing a final decree. Again, Selvanayagam was arrayed as a party respondent in the final decree proceedings. On 24.04.1997, the final decree was passed. Challenging the same, Selvanayagam preferred A.S.No.123 of 1997 and this came to be dismissed.

<https://hcservices.courts.gov.in/hcservices/> Selvanayagam moved this Court in S.A.No.945 of 2003, which is



still pending. It is in this back-drop, the present suit in O.S.No.61 of 2011 is filed by the plaintiff, who claims herself as a daughter born to Selvanayagam through Omana.

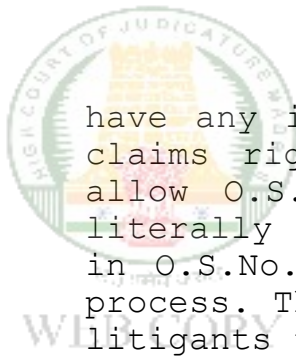
5.The learned counsel for the revision petitioners strongly contended that the suit properties in O.S.No.44 of 1976 and O.S.No.61 of 2011 are identical, though the schedule in which they are described vary. It was admitted even in the plaint in O.S.No.61 of 2011 that the properties are the self-acquisitions of Selvanayagam, which implies, plaintiff could not sustain a suit during the lifetime of Selvanayagam. And, Selvanayagam, during his lifetime indeed had defended the suit filed by his son namely the 15th defendant/Natarajan and lost it continuously. As on date, not only the Preliminary Decree was passed, but a final decree has also been passed. Secondly, it was also held in O.S.No.44 of 1976 that the marriage of Selvanayagam to the first defendant Omana was not proved and that finding has become final and necessarily, the plaintiff who claims herself to be a daughter born to Selvanayagam and the first defendant may not be able to stake a claim for share.

6.Heard, the learned counsel for the respondent, who would contend that the suit properties were purchased out of the Sridhana property given to her mother in 1949 and this has to be separately proved.

7.Normally, this Court would not strike off the pleadings while exercising its power under Article 227 of the Constitution of India. However, the Court cannot blindfold itself to abuse of its own process either. This can be briefly explained. Selvanayagam, right though the institution of O.S.No.44 of 1976 till the passing of final decree and even thereafter, has defended the suit laid by his son Natarajan. Since plaintiff claims only as a daughter and since she also admits that the suit properties are the self-acquisitions of Selvanayagam, it is apparent that she cannot claim any right in the suit property. If at all she has right, she can seek share only in the share allottable to Selvanayagam in O.S.No.44 of 1976.

8.On reading the typed-set of papers, it appears Selvanayagam has not moved for passing any preliminary decree for his share. This is logical since he opposed the very right of his son Natarajan to seek partition. If at all, the plaintiff is entitled to any share she can seek a share only in the share that may be allotted to Selvanayagam. Whether she will be entitled to a share in the property, because she was alleged to be an illegitimate child, is a issue this Court does not want to venture into now. If the first respondent/plaintiff has to seek only a share allottable to Selvanayagam, then, the same can be worked out in O.S.No.44 of 1976 and a separate suit, including all the schedules of the properties and all the parties-defendants, is not necessary.

9.Viewing thus, the suit laid by the plaintiff is one suit too



have any independent right over any of the suit properties as she claims right only under Selvanayagam. In these circumstances, to allow O.S.No.61 of 2011 to continue on file of the Court will literally end up in reopening the decree for partition validly made in O.S.No.44 of 1976 and that would be a gross abuse of judicial process. This Court may not be able to entertain such temptations of litigants to misuse judicial process.

10.Hence, this Court exercises its extraordinary powers under Article 227 of the Constitution and strikes off the plaint on the file of Subordinate Court, Kuzhithurai. However, the first respondent/plaintiff in O.S.No.61 of 2011 may implead herself in the pending S.A.No.945 of 2003 or move the trial Court in O.S.No.44 of 1976 for seeking such proper remedy if she is so desirous.

11.In conclusion, the Civil Revision Petition is allowed and the plaint in O.S.No.61 of 2011 on the file of Subordinate Judge, Kuzhithurai is struck off. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1.The Subordinate Court, Kuzhithurai.

2.The Section Officer, (2 Copies)
V.R.Section,
Madurai Bench of Madras High Court, Madurai .

+1 CC to M/s.P. THIYAGARAJAN, Advocate (SR-17326[F] dated 17/09/2020)
+1 CC to M/s.P. VELMURUGAN, Advocate (SR-17351[F] dated 18/09/2020)
+1 CC to M/s.J. ANANDHAVALLI, Advocate (SR-17323[F] dated 17/09/2020)

C.R.P. (PD) (MD) No.300 of 2012
&M.P (MD) .No.1 of 2012
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tsg-2

SDS (05.10.2020) 4P-7C