



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 07.01.2020
CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

C.R.P (MD)No.812 of 2019
and
C.M.P. (MD)No.4952 of 2019

Jain Natarajan ... Petitioner / plaintiff
Vs.
1.Natarajan Mudaliyar
2.N.Sindhuja ... Respondents /Defendants

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the suo-motu transfer of a civil suit in O.S.No.82 of 2015 from the Court of Additional District, Kanyakumari at Nagercoil to the Family Court, Kanyakumari District at Nagercoil, which has been renumbered as O.S.No.1 of 2019 and consequently direct Additional District Court, Nagercoil to conduct OS.No.82 of 2015.

For Petitioner : Mr.K.P.Narayanakumar
For R1 : Mr.N.Madhava Govindan
For R2 : Mr.K.Rajeswaran

ORDER

This Civil Revision Petition is filed against the suo-motu order passed by the Additional District Judge, Kanyakumari, transferring O.S.No.82 of 2015, dated 19.12.2019 to the Family Court, Nagercoil, which was numbered as O.S.No.1 of 2019.

2. The petitioner herein is the plaintiff and the respondents herein are the defendants in O.S.No.82 of 2015. The petitioner herein / plaintiff filed a suit in O.S.No.82 of 2015 seeking a prayer for declaring the title of the plaintiff, for recovery of possession and for mesne profits and for injunction not to encumber or alienate the suit property. The respondents / defendants filed a written statement and question of jurisdiction was raised by the defendants_in the written statement. The Additional District Judge, Kanyakumari at Nagercoil, suo-motu passed an order and transferred the suit to the file of the Family Court, Nagercoil. Against which, the petitioner come forward with this Civil Revision Petition.

3. On the side of the petitioner, it is stated that the petitioner / plaintiff was the wife of the first respondent / first defendant. When the petitioner / plaintiff was working abroad, the



first respondent / first defendant was having no job and at that time, the petitioner / plaintiff purchased the property in the name of her husband / first respondent herein on 14.03.2011. After the petitioner / plaintiff return back from abroad, a settlement deed was executed by her husband in favour of the petitioner / plaintiff on 18.11.2011. It is further stated that the second defendant claimed to be the second wife of the first defendant trespassed into the house and hence, the revision petitioner / the plaintiff filed a suit in O.S.No.82 of 2015. Without understanding the nature of the case, the learned Additional District Judge, passed the transfer order. In the order passed by the learned Additional District Judge, it is stated that the suit is filed with a prayer of partition, whereas, the suit prayer is not a prayer for partition at all. Another observation made by the trial Court is that the property was settled in the name of the second wife, whereas, the property was settled in the name of the petitioner / plaintiff.

4. On the side of the petitioner / plaintiff, it is stated that Section 7 of the Family Court Act, which reads as follows:

7. Jurisdiction.- (1) Subject to the other provisions of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any district Court or any subordinate civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation: and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district Court or, as the case may be, such subordinate civil Court for the area to which the jurisdiction of the Family Court extends.

Explanation.- The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-

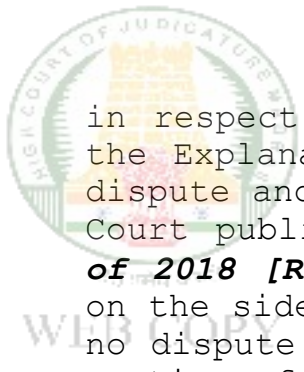
(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

5. The Family Court can exercise jurisdiction of the Civil Court in a suit proceedings between the parties to the marriage, but, this suit is purely a civil dispute and not a Family dispute at all.

6. On the side of the petitioner, it is further stated that under Section 8 of the Family Courts Act, no District Court or Subordinate Civil Court referred to in sub-section (1) of Section 7



in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section, whereas, this case is a civil dispute and not a family dispute. A judgment of the Hon'ble Supreme Court published in MANU/SC/0342/2018 passed in **Civil Appeal No.432 of 2018 [R.Kasthuri and others Vs. M.Kasthuri and others]** is cited on the side of the petitioner, wherein, it is decided that "there is no dispute between the plaintiffs and the defendants, depriving the parties of the benefit of the services of counsel is wrong. Taking into account all that has been said above, we are of the view that the High Court was not correct in holding the suit filed by the plaintiffs - Appellants to be not maintainable in law. Accordingly we set aside the order of the High Court dated 15th June, 2015 passed in S.A.No.725 of 2005 and remand the matter to the High Court."

7. On the side of the petitioner, it is argued that the transfer order cannot be passed by the learned Additional District Judge, Kanyakumari at Nagercoil and the transfer order can be passed only by the Principal District Judge, or by the High Court. If at all there is any necessity, the learned Additional District Judge has to refer the matter to the Principal District Judge and the Principal District Judge has to pass an order of transfer.

8. On the side of the respondents, it is stated that the case is declaring the children as the legal representatives of the second defendant and the second defendant is the second wife of the deceased husband and the first respondent / first defendant also worked in the United States of America (U.S.A.) and he purchased the property and there was no marriage between the petitioner / plaintiff and the first respondent / first defendant.

9. On the side of the petitioner, it is stated that the respondent did not raise any such point in the written statement and the order passed by the learned Additional District Judge, Kanyakumari, is a suo-motu order.

10. Heard both sides.

11. It is seen that the prayer in O.S.No.82 of 2015 is not for declaring the validity of marriage or to declare the parties as the legal representatives of the deceased/ first respondent. The Additional District Judge, Nagercoil made some observations in the order stating that the suit is for partition and that the property was settled in the name of the second defendant, whereas the suit is for declaration of title, for recovery of possession and for injunction not to make any encumbrance or alienation in the property. It is clear that the Additional District Judge, Nagercoil, has misunderstood the prayer column in the suit. The defendants did not raise any objection as to the jurisdiction of the Civil Court in the written statement. When the question of



jurisdiction was not raised in the written statement, without considering the nature of the case, the Additional District Judge has suo-motu transferred the suit to the file of the Family Court, which is unwarranted.

12. In the above circumstances, the suo-motu transfer order of the Additional District Judge, is set aside and the suit in O.S.No.1 of 2009 pending on the file of the Family Court, Nagercoil is withdrawn and the suit is re-transferred to the file of the Additional District Judge, Kanyakumari at Nagercoil.

13. With the above directions, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Ls

To

1. The Family Court,
Nagercoil.
2. The Additional District Judge,
Kanyakumari at Nagercoil.
3. The Section Officer,
VR Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.K.RAJESHWARAN, Advocate (SR-859[F] dated 08/01/2020)
+1 CC to Mr.K.P.NARAYANAKUMAR, Advocate (SR-1197[F] dated 09/01/2020)

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