



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02.12.2020

CORAM :

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

**C.R.P (MD) (NPD) No.2380 of 2018**

**and C.M.P (MD)No.10640 of 2018**

WEB COPY

1.G.Sarathamani  
2.T.Vanaja  
3.P.Uma Sridevi

...Petitioners/Petitioners/Plaintiffs

Vs.

1.R.Guruvammal  
2.K.R.Uma Shankar  
3.R.Raja Vinayagam

... Respondents/Respondents/Defendants

**PRAYER:** The Civil Revision Petition filed under Article 227 of the Constitution of India against the order passed in I.A.NO.96 of 2018 in O.S.No. 78 of 2016 dated 05.09.2018 on the file of the IV Additional District Court, Tirunelveli.

For Petitioners : Mr.H.Arumugam

For Respondents : Mr.R.J.Karthick

**ORDER**

The revision petitioners are the plaintiffs in O.S.No.78 of 2016 which they have filed for partition of the suit properties. The first defendant is the mother and the second defendant is the brother. The property belongs to the father of the plaintiffs and the second defendant.

2. In the written statement, the defendants have taken up a contention that the father had executed a Will dated 09.09.2014. It is in these circumstances, when the case is listed for trial, the plaintiffs have moved I.A.No. 96 of 2018 seeking a direction of the court to direct the second defendant to commence the trial since the initial burden is on the second defendant. This petition came to be dismissed and hence, the plaintiffs have come forward with this case.

3. Heard both sides.

4.It is far too fundamental a principle that the burden is on one who affirms the fact. In determining the fact, the trial court ought to weigh the rights which the parties claim in the subject matter of the suit. Admittedly, in this case, but for the alleged Will which the second defendant has propounded, all the parties would be entitled to either equal share or depending on the character of the property, fractional share. By virtue of this Will, the second defendant attempts to exclude the plaintiffs to their



shares. Necessarily, the initial burden is cast on the defendants as to how they are going to sustain their contention of excluding the plaintiffs to their shares.

5. This Court requires the trial Judges to bestow necessary attention to understand that the cases, where the defendant takes a plea of discharge of debt, then it is axiomatic that the defendant admits the loan, therefore, the plaintiff is discharged from the need to prove the loan. Similarly, in a suit for partition, where a Will or a settlement deed are relied on by the defendant to deny a share to the plaintiffs, what it implies is that but for any of these documents, the plaintiffs would be entitled to a share. Therefore, the plaintiffs need not prove the right in the property.

6. In the result, this petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

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/ /2021

Sub Assistant Registrar(CS)

cm

To

1.IV Additional District Judge, Tirunelveli.

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

+1 cc to Mr.H.ARUMUGAM ,Advocate, SR No.23856

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**02.12.2020**

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sr (CO)  
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