

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP(PD)No.389 of 2021

and

CMP.No.3347 of 2021

[Through Video Conferencing]

1.K.M.Thiruneelakandan

2.K.M.Sivaji

... Petitioners / D3 & D5

vs.

T.Senthilkumar

... Respondent / Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the Order and Decree made in I.A.No.Nil of 2021 in O.S.No.44 of 2005 on the file of the Additional District Judge (FTC), Vellore, Vellore District, dated 27.01.2021.

For Petitioners : Mr.K.A.Ravindran

For Respondent : Ms.Chitra Sampath, Senior Counsel

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ORDER

The revision petition has been filed questioning the order in unnumbered I.A of the year 2021 in O.S.No.44 of 2005 now pending on the file of the Additional District Judge (Fast Track Court) at Vellore.

2.It is to be mentioned that though the nomenclature of the suit is O.S.No.44 of 2005, the said suit had actually been instituted in the year 1995. It is a suit for partition. The plaintiff at the time of institution of the suit was a minor. The suit had been meandering around without any effective progress. Issues have been framed. The trial has just yet commenced. At that stage, the unnumbered I.A came to be filed by the 3rd and the 5th defendants to, for reasons which they feel are justified.

3.They claim that the plaintiff, though his parents was alive, was represented by his maternal grand father and in the body of the plaint had described his father who were shown as the 4th defendant was a person of unsound mind. A written statement had actually been filed by the 4th defendant claiming that he is a person of sound mind. Thereafter, the 4th defendant died.

4.The unnumbered I.A came to be filed, taking advantage of Order VII Rule 11 of the Code of Civil Procedure seeking to reject the plaint claiming that the plaintiff had wrongly categorized the 4th defendant a person of unsound mind. This fact was disputed by the 4th defendant himself by filing of written statement.

5.It was claimed in the unnumbered I.A that since the plaintiff had categorized the 4th defendant as a person of unsound mind, the plaint should be struck of or rather rejected.

6.The learned Additional District Judge (Fast Track Court) at Vellore, extracted the affidavit filed in support of the petition in entirety. As a matter of fact, this led to a small confusion on the part of this Court wherein a wrong impression was held out that though the affidavit was extracted, they were the findings of the Court. Fortunately that has been pointed out during the course of subsequent hearings. The learned Additional District Judge after extracting the affidavit, stated that since the suit is for partition merely because person was categorized as a person of unsound mind, the plaint cannot be rejected.

7.It had also been pointed out that there are several other issues framed in the case and therefore, trial would be the answer.

8.Questioning that particular order dated 27.01.2021, the revision petition has been filed.

9.Mr.K.A.Ravindran, learned counsel pointed out that the plaintiff was represented by his maternal grand father when the parents were alive and also

that he had unfortunately described his own father as being a person of unsound mind. These two aspects are stressed by Mr.K.A.Ravindran, learned counsel who therefore insisted that this Court should reject the plaint.

10.This contention was seriously disputed, questioned and challenged by Ms.Chitra Sampath, learned Senior Counsel appearing on behalf of the respondent/plaintiff who pointed out that the plaintiff was a minor at the time of institution of the suit and was represented by his maternal grand father and admittedly as grand son the plaintiff had a right to a share in the suit properties. The learned Senior Counsel also stated that the plaintiff had stated that the 4th defendant is his father and was suffering from mental illness. The learned Senior Counsel also stated that enquiry on that aspect as contemplated under Order 32 CPC could not be done owing to the unfortunate death of the 4th defendant.

11.It is also contented by the learned Senior Counsel that the plaint cannot be rejected on this sole narrow ground. There are several other issues which have to be addressed and which requires, a trial process to be undergone. The witnesses will have to graze the witness box. The witnesses must be given an opportunity to put forth their respective cases and those statements must also be subjected to cross examination. Only thereafter can findings be render on all contentious aspects.

12.This Court required the issues which had been framed by the Court for trial to be produced and a string of 13 issues have been presented. Thereafter, 2 additional issues have also been framed and Issue No.10 which had been framed earlier had also be recast. This exercise was done on 05.03.2021.

13.It is contended by Mr.K.A.Ravindran, learned counsel that an issue should be framed with respect to the institution of the suit by the plaintiff was being represented by his maternal grand father and regarding the categorization of the 4th defendant as a person of unsound person when in the written statement the 4th defendant had categorically stated that he was not a person of unsound mind.

14.Be that as it may, those facts may not disentitle the plaintiff to a share if he is entitled to the properties by birth. The plaint proceeds on the basis that the plaintiff is entitled to a particular ratio or share on the properties mentioned in the Schedule to the plaint. It is contended that some of the properties had been sold out but even for those properties, the value of the properties to the extent of share of the plaintiff had been kept in the Court deposit.

15.I am sure that Mr.K.A.Ravindran, learned counsel would not take the extreme stand to state that the plaintiff is not at all entitled to any share in the

properties. Whether the plaintiff is entitled for a share or not is the primary issue to be decided. Surrounding issues have already been framed.

16. One additional fact which the learned Additional District Judge at Vellore should consider during the course of analysis of evidence while delivering the Judgment is whether the plaintiff should be given any consideration since, the plaintiff had categorized his father as a person of unsound mind at the time of institution of the plaint and whether it was proper to be represented by his maternal grand father at the time of institution of the plaint.

17. I must again point out that both the facts as issues do not survive as on date because the plaintiff has become a major and the 4th defendant/father has also, unfortunately expired and there has been no effective adjudication of his mental status as contemplated under Order 32 of the Code of Civil Procedure. But still since that aspect had been taken in the written statement, I would, with much care and precaution frame the following additional issue for consideration during the trial.

18. *"Whether categorization of the 4th defendant as a person of unsound mind in the plaint would disentitle the plaintiff to seek the relief of partition?"*

This issue can be answered in conjunction with Issue No.9 which has already been framed.

19.I am informed that in the suit, several Interlocutory Applications are pending for filing of additional written statement and to introduce further documents. Whenever the Interlocutory Applications are disposed of and whenever the parties are prepared to graze the witness box and rather to permit the plaintiff to graze the witness box, then from that date onwards, when trial effectively commences, the learned Additional District Judge at Vellore may post the matter on a day to day basis and even if that is not practically possible owing to various circumstances, grant not more than three working days in between any two adjournments and not grant more than two successive adjournments for the very same reason. The plaintiff and the defendants are directed to be bound by these directions and should co-operate in the trial in the aforesaid manner. If that procedure is followed, then, the learned Additional District Judge, Vellore will certainly have the trial under his/her control.

20.At any rate, after the trial commences, then from that date onwards within a period of four months the trial should come to the end.

C.V.KARTHIKEYAN, J.

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21.The order under revision need not interfered with. The parties are advised to go back to the trial Court and address the pending Interlocutory Applications and thereafter, commence trial from the stage where it had been stalled namely the stage of filing of proof affidavit of P.W.1.

22.With the above observations, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is also closed. No order as to costs.

22.07.2021

Index:Yes/No
Internet:Yes/No
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To: The Additional District Judge, (FTC),
Vellore, Vellore District. सत्यमेव जयते

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