

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.Nos.1606 of 2013 and 229 of 2013 &
MP.No.1 of 2013

CRP.PD.No.1606 of 2013

Banumathy

..Petitioner

Vs.

- 1.Rajasundaram @ Sundarraja Reddiar(deceased)
- 2.Vanaja @ Shanthi
- 3.Jayanthi @ Vasanthi
- 4.Aruljothi
- 5.Kanaga Mahalakshmi
- 6.Nagaraj
- 7.Saraswathi
- 8.Padma
- 9.Vasu
- 10.Gopalakrishna Reddiar
- 11.Padmalochni
- 12.Muthialu
- 13.Vignesh
- 14.Sarojini
- 15.Brinda
- 16.Meera @ Maragatham
- 17.Nalini
- 18.Lakshmi

..Respondents

(RR16 to 18 brought on record as LRs of deceased 1st respondent vide order of Court dated 14.06.2017, by KKSJ, made in CMP 8039/2017 to 8041/2017 in CRP.No.1606/2013)

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 14.12.2012 made in IA.No.642 of 2012 in O.S.No.66 of 2010 on the file of the II Additional District Court, Puducherry.

For Petitioner : Mr.Sam Houston Jayaraj

For Respondents

R1 : Died(steps taken)

For R2 : Mr.I.Abas Mohamed Abdullah

R3 to R14 : Notice served

For R15 : Mr.T.R.Rajagopalan,
Senior Counsel
for Mr.T.R.Rajaraman

R16 to R18 : Mr.T.S.Baskaran

CRP.PD.No.229 of 2013

Brinda

..Petitioner

Vs.

1.Rajasundaram @ Sundarraja Reddiar(deceased)

2.Vanaja @ Shanthi

3.Jayanthi @ Vasanthi

4.Aruljothi

5.Kanaga Mahalakshmi

6.Nagaraj

7.Saraswathi

8.Padma

9.Vasu

10.Gopalakrishna Reddiar

11.Padmalochni

12.Muthialu

13.Vignesh

14.Sarojini

15.Banumathy

16.Meera @ Maragatham

17.Nalini

18.Lakshmi

..Respondents

(RR16 to 18 brought on record as LR
of deceased 1st respondent vide order
of Court dated 27.01.2016,
made in MP 1/2015
in CRP.No.229/2013)

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 16.10.2012 made in I.A.No.506 of 2012 in O.S.No.66 of 2010 on the file of the II Additional District Judge, Pondicherry.

For Petitioner : Mr.T.R.Rajagopalan,
Senior Counsel
for Mr.T.R.Rajaraman

For Respondents
R1 : Died
R2 to R14 : Notice served
For R15 : Mr.Sam Jayaraj Houston
for M/s.Sarvabhauman Associates
for Mr.T.R.Rajaraman
R16 to R18 : Mr.T.S.Baskaran

ORDER

These civil revision petitions are filed to set aside the order dated 14.12.2012 made in O.S.No.66 of 2010 on the file of the II Additional District Court, Puducherry and against the fair and decreetal order dated 16.10.2012

made in I.A.No.506 of 2012 in O.S.No.66 of 2010 on the file of the II Additional District Judge, Pondicherry.

2. Both the petitioners are 14th and 15th defendant in the suit filed by the first respondent herein for partition. After examining PW1, the petitioners filed petition to implead the petitioners as defendants in the main suit since they purchased some items of the suit properties. Thereafter they have been impleaded as 14th and 15th defendants in the suit and filed their written statements. Immediately they filed petition to reject the plaint under Order VII Rule 11(b) and (d) of CPC. Both the petitions were dismissed by the trial court for the reason that the ground raised for rejection of plaint are not covered with the Order VII Rule 11 of CPC. The suit is in part heard stage. This Court by order dated 23.08.2011 has already directed the trial court to dispose of the suit within a period of four months. Therefore, the petition for rejection of plaint is unnecessary at this stage and dismissed.

3. Mr.T.R.Rajagopalan, the learned Senior Counsel appearing for the petitioner in CRP.PD.No.229 of 2013 submitted that the plaintiff filed suit for partition of suit properties belong to his father and his mother has no right or title or interest over the same. The plaintiff suppressed the fact that the suit properties were already declared in favour of the mother of the plaintiff in

OS.No.370 of 1984 by the judgment and decree dated 06.08.1984. In fact, the plaintiff was also party in the said suit and appeared through his counsel and he conceded to the title of his mother. On the strength of the decree of declaration most of the suit properties were settled to all her heirs including the plaintiff by way of settlement deed and also Will. While being so, the plaintiff failed to challenge the Will executed by his mother. Thereafter, the other defendants have sold out some of the suit properties in favour of the 14th and 15th defendants by the registered sale deed and as such the suit itself is bad for not seeking the relief of declaration declaring that the sale deed as well as the Will are null and void. Therefore, without the prayer of declaration and recovery of possession, the plaintiff cannot institute the suit for partition alone.

3.1 He further submitted that the trial court dismissed the petition only for the reason that this Court already directed the trial court to complete the trial within a stipulated time. When it being so, the interlocutory application cannot be entertained. In fact the petitioners were impleaded as 14th and 15th defendants in the suit only on the application filed by the plaintiff. Even before the said application this Court directed the trial court to complete the trial. Therefore, the petitioners were not parties to the suit at the time of direction issued by this Court. After filing written statement on

24.07.2012, immediately on 28.08.2012, the petitioner filed petition to reject the plaint.

4. Mr.Sam Houston Jayaraj, the learned counsel for the petitioner in CRP.PD.No.1606 of 2013 added further submission made by the learned Senior Counsel, the petitioner is the 14th defendant in the suit filed by the plaintiff. The suit properties were already settled by the plaintiff's father by the registered settlement deed dated 21.10.1978 in favour of his wife i.e. the mother of the plaintiff. Thereafter, in respect of some of the properties were partitioned by the plaintiff's father and his sons by the partition deed 09.07.1980. The mother of the plaintiff filed suit in OS.No.370 of 1984 for declaration declaring some of the suit properties as against own sons including the plaintiff and the same was decreed by the judgment and decree dated 06.08.1984. On the strength of the declaration decree passed in OS.No.370 of 1984 some of the suit properties were settled by his mother in favour of his brother by the registered settlement deed dated 04.02.1999. In respect of some of the other suit properties are concerned, his mother settled in favour of other sisters by the settlement deed dated 29.11.2000 and 01.12.2000. Remaining property bequeathed by the Will dated 25.10.2006 in favour of another son. Some of the properties also sold out by the sale deed dated 05.03.2009 in favour of her own son. While being so, by the sale deed dated

31.03.2010, the petitioner purchased one item of the suit properties from sister of the plaintiff herein. Likewise, the petitioner in CRP.No.229 of 2013 purchased the suit property by registered sale deed dated 31.03.2010 from one of the brother of the plaintiff herein. Another property also purchased by the petitioner by the registered sale deed dated 02.06.2010. Therefore almost entire suit property have been encumbered by the decree of declaration, settlement deed, Will and sale deeds. In fact, the plaintiff had full knowledge about those deeds. He claimed properties for partition as if all the properties owned by his father. Therefore, there is absolutely no cause of action to file suit for partition and he suppressed the above fact and filed suit for partition. As such the suit itself is liable to be rejected.

5. Per contra, Mr.T.S.Baskaran, the learned counsel for the plaintiff/ first respondent submitted that any of the grounds raised by the petitioners are not attracted the provisions under Order VII Rule 11 of CPC. Even according to the petitioners, some of the properties were sold out and settled in favour of others and as such partition has to be determined with respect to entire estate left by the deceased father and not in respect of certain items. The plaintiff did not aware of the judgment and decree passed in OS.No.370 of 1984 and only after filing the suit, he came to understand from the pleading of the defendants and he also had taken steps to cancel the said

judgment and decree in the manner known to law. In fact the suit filed by one of the brother for partition in O.S.No.56 of 2010. The earlier suit in O.S.No.370 of 1984 was suppressed by all the defendants in order to defraud the plaintiff. Therefore, the trial court rightly dismissed the petition since the ground raised by the petitioners are not covered under Order VII Rule 11 of CPC to reject the plaint and further stated that the parties can raise all contentions during the trial and they are at liberty to examine the concerned witnesses and file the relevant documents.

6. Heard, Mr.T.R.Rajagopalan, the learned Senior Counsel appearing for the petitioner in CRP.PD.No.229 of 2013, Mr.Sam Houston Jayaraj, the learned counsel for the petitioner in CRP.PD.No.1606 of 2013 and Mr.T.S.Baskaran, the learned counsel for the plaintiff/ first respondent.

7. The petitioners are defendants 14 and 15 in the suit filed by the first respondent herein for partition. After filing the suit for partition, the first respondent filed petition to implead the petitioners and another as defendants in the main suit, since the plaintiff had knowledge about the purchase only after filing the suit. After impleading the petitioners as defendants 14 and 15 in the main suit they filed written statement on 10.09.2012 and 24.07.2012 respectively. Thereafter they filed petition to reject the plaint on various

grounds. The 14th defendant marked Ex.P1 to P24. On perusal of documents revealed that some of the suit properties were settled in favour of the mother of the plaintiff by his father. Thereafter some of the properties were partitioned among the brothers and his father by the partition deed dated 09.07.1980. On the strength of the settlement deed, the mother of the plaintiff also filed suit for declaration in OS.No.370 of 1984 and the same was decreed by the judgment and decree dated 06.08.1984. The plaintiff is also one of the parties in the said suit, he filed vakalat and conceded to the prayer sought for by his mother. Thereafter the mother of the plaintiff settled some of the suit properties in favour of one of the brother of the plaintiff by the registered settlement deed dated 04.02.1999 and 29.11.2000. On the strength of the said settlement deed, some of the properties again settled by one of the brother namely Gopalakrishnan in favour of his wife Sarojini. Further by the Will dated 25.10.2006 mother of the plaintiff bequeathed some of the properties in favour of the plaintiffs bother. In turn, on the strength of the settlement deed, the Sarojini namely wife of the Gopalakrishnan sold out the suit property in favour of the petitioner by the sale deed dated 31.03.2010 and 02.06.2010. In respect of one item of the property by the sale deed dated 31.03.2010, the petitioner in CRP.No.229 of 2013 purchased from the said Gopalakrishnan namely brother of the plaintiff herein. The trial court dismissed the petition only on the ground that the grounds raised for rejection

of plaint are not covered under Order VII Rule 11 of CPC. Further this Court by order dated 23.08.2011, directed the trial court to dispose of the main suit within a period of four months as such interlocutory applications cannot be entertained and the present petition for rejection of plaint is unnecessary at this stage.

8. Though the trial court marked the above said documents as Ex.P1 to P24 did not even looked into and there is absolutely no discussion about the same. Though the trial court observed that the petitioners can raise all the contentions during the trial and they are at liberty to file relating documents by examining the witnesses, the trial court ought to have examined those documents which were marked by the petitioners as Ex.P1 to P24 and discussed about the same. Though the trial court cannot looked into in respect of facts, the trial court can be considered the legal issues raised by the petitioners in respect of abuse of process of law and suppression of facts.

9. In view of the above discussion, both the civil revision petitions are allowed and the order dated 14.12.2012 made in IA.No.642 of 2012 in O.S.No.66 of 2010 on the file of the II Additional District Court, Puducherry and the order dated 16.10.2012 made in I.A.No.506 of 2012 in O.S.No.66 of 2010 on the file of the II Additional District

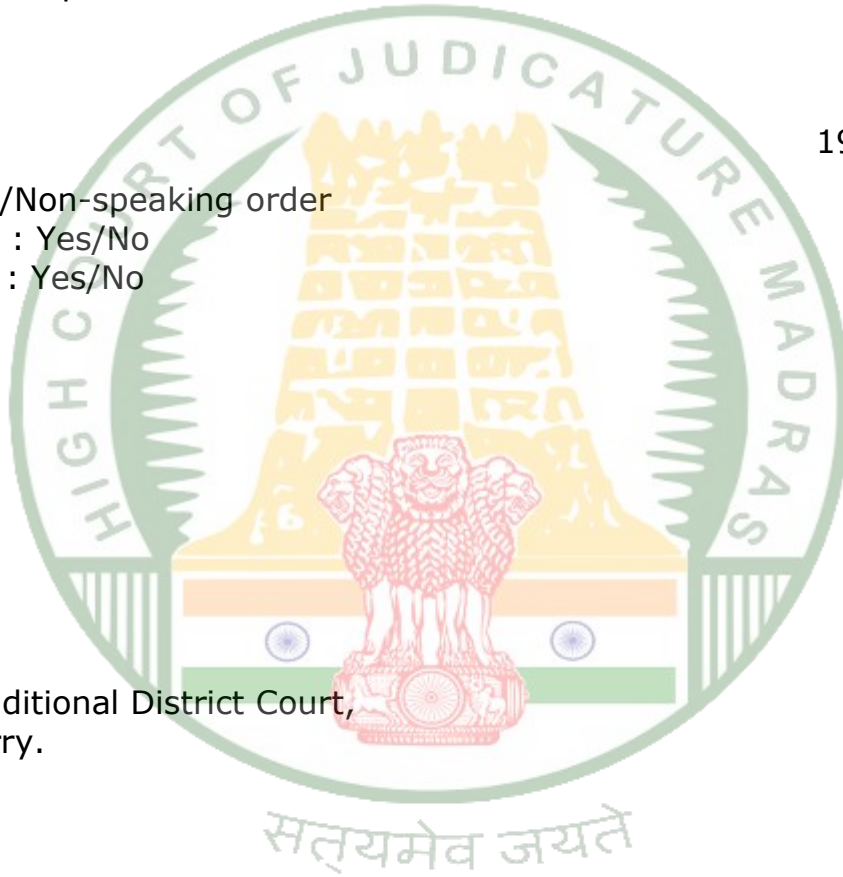
Judge, Pondicherry are set aside. Both the petitions in IA.No.642 of 2012 and IA.No.506 of 2012 are remanded back to trial court for fresh consideration to pass orders on merits and in accordance with law within a period of four weeks from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No order as to costs.

19.01.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
lok

To

The II Additional District Court,
Puducherry.



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G.K.ILANTHIRAIYAN,J.

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CRP.PD.Nos.1606 of 2013 and 229 of 2013

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