

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2021

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD) No.582 of 2021
and
C.M.P. No.4920 of 2021

K. Shanmugavalli, ... Petitioner

Vs.

1. G. Kothainayaki
2. R. Thinamani @ Kasthuri
3. J. Punitha, ... Respondents

Prayer: This Civil Revision Petition filed under Article 227 of Constitution of India praying for to set aside the impugned order returning the petition in I.A. Sr.No.290 of 2021 in I.A. No.87 of 2016 in O.S. No.8 of 2013, dated 15.02.2021 by the Hon'ble IV Additional District Judge, Ponneri and consequently, direct the Trial Court to take the I.A. Sr. No.290 of 2021 in I.A. No.87 of 2016 in O.S. No.8 of 2013 on its file and decide the same on merit in accordance with law.

For Petitioner ... Mr. E. Prabu

For Respondents ... No Appearance

ORDER

This Civil Revision Petition has been filed under Article 227 of Constitution of India praying for to set aside the impugned order returning the petition in I.A. Sr.No.290 of 2021 in I.A. No.87 of 2016 in O.S. No.8 of 2013, dated 15.02.2021 by the Hon'ble IV Additional District Judge, Ponneri and consequently, direct the Trial Court to take the I.A. Sr. No.290 of 2021 in I.A. No.87 of 2016 in O.S. No.8 of 2013 on its file and decide the same on merit in accordance with law.

2. The case of the petitioner is that the the petitioner herein is the 2nd defendant who is younger sister and the respondents herein are plaintiffs in the suit in O.S. No.8 of 2003 on the file of the IV Additional District Judge, Ponneri, who are elder sisters and daughters of the 1st defendant in the suit. The suit properties are originally belonged to their father Late Mr. Aravamudha Naicker. He executed a Settlement Deed, vide Doc. No.2846 of 1960, in favour of their Mother Mrs. Raghubhushanmmal, who is the 1st defendant in the suit, granting right of enjoyment and possession over the suit properties till her life without

the right of the alienation and to vest the properties on the male children if any born to them and in the absence of male children reversion of the suit properties to the executant Mr.Aravamudhan Naicker. The said Mr.Aravamudhan Naicker died on 24.08.1970 leaving behind his wife and four daughters namely the petitioner and the respondents herein. The plaintiffs/respondents herein have filed the aforesaid suit praying for to pass Judgment and decree against the defendant, (a) declaring the Settlement Deed vide Doc. No.7305 of 2012, and registered at the SRO, Thiruvottiyur dated 06.09.2012, as null and void, illegal and not binding on the plaintiffs; (b) for a consequential relief of injunction against the defendants for dealing with the schedule mentioned properties in any manner; (c) for the division of the schedule mentioned properties by metes and bounds and to handover the plaintiffs 1/5th of their proportionate share as the suit schedule property was executed by way of settlement deed in favour of the 2nd defendant only by the mother of the petitioner and respondents herein showing partiality. The Trial Court after considering oral and documentary evidence passed a preliminary decree on 27.11.2015 to divide the suit properties into 5 equal shares and to allot the plaintiffs/respondents herein each 1/5th share, declaring that

the Settlement Deed document No.7305 of 2012 registered at the SRO, Thiruvottiyur, dated 06.09.2012 as null and void, illegal and not binding on the plaintiffs/respondents herein and for consequential relief of injunction against the defendants for dealing with the schedule mentioned properties in any manner. Thereafter, the plaintiffs/respondents herein have filed I.A. Nos.87 and 88 of 2016 before it seeking for to appoint an Advocate Commissioner directing him to divide the Suit Schedule properties in 3/5 proportionate share and further it has been amended as 3/4 share by metes and bounds in view of the demise of their mother and submit a report to the Court below. The Trial Court allowed the aforesaid I.As as prayed for. Assailing which, the 2nd defendant/petitioner herein has filed I.A. Sr.No.290 of 2021 praying for (i) to take up enquiry in the I.A. Nos.87 & 88 of 2016 with regard to division and allotment of shares to the respondents and petitioner herein thereby granting 3/5th share and 2/5th share respectively in the suit property and (ii) to defer issuance of Warrant to the Advocate Commissioner for fresh inspection till the issue of division and allotment of shares to the respondents and the petitioner are determined. The same was returned on the ground of how the petition is maintainable. Against the returning of the aforesaid Interlocutory

Application, the present Revision petition has been filed by the petitioner herein.

3. The learned counsel for the petitioner would submit that the Trial Court erred in permitting the advocate commissioner to proceed with the inspection of the suit property to suggest division of 3/4 share without deciding the devolution of 1/5th share of mother of the petitioner. Initially, the plaintiffs/respondents have filed suit for partition claiming 3/5 share in the suit schedule property stating that the 2/5th share belongs to the petitioner and her mother. Accordingly, a preliminary decree was passed allotting 3/5th share alone to the plaintiffs/respondents herein. While being so, without deciding the issue of division of shares, the advocate commissioner shall not have been allowed to inspect the suit properties as per the entitlement of the shares to the plaintiffs/respondents decided by the Trial Court. As the plaintiffs/respondents herein completely neglected their mother Mrs. Raghubhushanammal, and the petitioner alone looked after her. Hence, a Settlement Deed, dated 06.09.2012 vide Document No.7305 of 2012 was executed in favour of the 2nd defendant/petitioner herein. Hence, the sisters of the petitioner

filed suit in O.S. No.8 of 2013 claiming their 3/5th shares in the suit schedule property. After decree was passed in the suit for division of 3/5th shares when the mother was alive and after her death, they are claiming 3/4th shares by filing I.As before the Court below, while the settlement Deed dated 06.09.2012 vide Document No.7305 of 2012, was executed in favour of the petitioner with regard to the suit properties by her mother out of love and affection in respect of her 1/5 share. Hence, the petitioner is entitled to claim the share of the deceased Mrs. Raghubhushanmmal, who is the mother of the petitioner and respondents herein and the 1st defendant in the suit. In view of the above, the petitioner has filed I.A. Sr.No. 290 of 2021 in I.A. Nos.87 & 88 of 2016 seeking for to take up enquiry in the I.A. Nos.87 & 88 of 2016 filed by the defendants/respondents herein with regard to division and allotment of shares to the respondents and petitioner herein thereby granting 3/5th share and 2/5th share respectively in the suit properties. Without considering the facts and circumstances of the case properly, the Court below returned the application on the ground of how the petition is maintainable which is unsustainable either in law and on facts and liable to be set aside.

4. Heard, the learned counsel for the petitioner as well as perused the material available on record.

5. On a perusal of the record it is seen that the even though the first appeal has been filed against the preliminary decree passed in O.S. No.8 of 2013, the same was dismissed without numbering for not complying the conditional order of this Court. Further, while defendants/respondents herein sought for the partition into 3/5 shares in the suit schedule property in the suit, it has been amended as 3/4 shares in Interlocutory application since the mother of the parties died on 20.09.2018 praying to issue warrant to the Advocate Commissioner for the partition. Challenging the aforesaid amendment prayer, the petitioner has filed I.A. Sr.No.290 of 2021 on the file of the IV Additional District Judge, Ponneri, praying for to take up enquiry in the I.A. Nos.87 & 88 of 2016 filed by the defendants/respondents herein with regard to division and allotment of shares to the respondents and petitioner herein thereby granting 3/5th share and 2/5th share respectively in the suit properties since the 2nd defendant/petitioner herein is entitled for the share of the 1st defendant/mother. After taking into consideration entire

facts and circumstances of the case and the petitioner's prayer in the I.A. Sr.No.290 of 2021, the Court below has questioned by docket order dated 15.02.2021 the petitioner herein that how the petition is maintainable and returned the same. Challenging the said return of the aforesaid I.A., the present Civil Revision petition has been filed under Article 227 of the Constitution of India. While the petitioner is having the good case, he ought to have proceeded further by complying the said return by way of giving proper explanation as to how the petition is maintainable before the Court below, instead of doing so, the petitioner has straight away filed the present Civil Revision petition challenging the return of the application under Article 227 of the Constitution of India wherein it has been stated as under:

“227. Power of superintendence over all courts by the High Court

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories interrelation to which it exercises jurisdiction

(2) Without prejudice to the generality of the foregoing provisions, the High Court may

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein: Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces”

6. According to the above, the supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an Appellate Court or the Tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or re-weigh the evidence upon which the inferior court or Tribunal purports to have passed the order or to correct errors of law in the decision. In

exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view.

7. In view of the above, this Court is not inclined to interfere with the order of the Court below as to the maintainability of the petition while it is the duty of the petitioner to comply with the same by way of proper explanation on maintainability of the petition before the Court below. Only when there is error committed in passing the order by the Court below without following the procedure established in the Law, this Court would interfere with the order passed by the Court below. But, in this matter, the Court below has asked only how the petition is maintainable. That being the case, the petitioner herein has to comply with the order of the Court below by giving explanation as to whether and how the petition is maintainable before the Court below. Without giving proper explanation before the Court below in relation to the maintainability of the said petition, the petitioner has straight away filed the present Civil Revision Petition in stead of exhausting the remedy in the Court below, seeking for listing the matter for maintainability. Hence, this Court is not

inclined to accept the contention made by the learned counsel for the petitioner and the same is liable to be rejected. Further, this Court is not inclined to give any liberty to the petitioner to approach the Court below in this regard. However, the learned counsel for the petitioner may approach the Court below on his own inclination in this regard.

8. In the result, the Civil Revision petition is dismissed. Consequently, connected miscellaneous petition is closed if any. The Registry is directed to return the original papers after substituting Xerox copy of the same in file.

19.03.2021

Lbm

Index: Yes/No.

Speaking/Non-Speaking order

Internet: Yes/No.

To:

The IV Additional District Judge,
Ponneri

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V.BHAVANI SUBBAROYAN, J.,

lbm



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