



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. NO.1476 OF 2021

AND

C.M.P. NO.11592 OF 2021

(Through Video Conference)

1. Minor Shri Hari
Rep. By Natural Guardian
Mother, Kiruba

2. Kiruba

...Petitioners/Plaintiffs

Versus

Shenbaga Valli

... Respondent/Defendant

PRAYER:-

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and final order passed in I.A.No.8 of 2020 in O.S.No.193 of 2017 dated 08.04.2021 on the file of Additional District Judge and Sessions Judge -II, Erode.

For Petitioners : Mr.K.S.Jeyaganeshan

O R D E R

This Civil Revision Petition is filed to set aside the fair and final order passed in I.A.No.8 of 2020 in O.S.No.193 of 2017 dated 08.04.2021 on the file of the learned Additional District and Sessions Judge II, Erode.

2. I.A.No.8 of 2020 was filed under Order XVIII rule 1 and Section 151 of the Civil Procedure Code, seeking permission to direct the respondent/defendant to adduce her evidence at first and permitting the petitioners/plaintiffs to adduce their evidence later, after the completion of the evidence of the respondent/defendant.



3. The suit was filed for partition and for separate possession. It is the case of the petitioner that the suit properties were purchased by the second petitioner's husband Ramesh in the name of his mother, who is the respondent herein. The entire sale consideration and other expenses incurred for the purchase of the suit property, was met by the second petitioner's husband and the respondent herein has no separate income to purchase the property. The second petitioner's husband died on 5.11.2011 in a train accident. After his demise, the respondent failed to take care of the petitioners.

4. It is alleged by the petitioners that the respondent purchased the suit property after selling a land in R.S.No.593/3D T.S.No.H/10/28 in Udagai Town on 17.08.2009, by obtaining loans. In such circumstances, the learned counsel for the petitioners submitted that the respondent should prove that she had purchased the property out of her own income.

5. This Petition was opposed by the respondent on the ground that the suit properties were purchased by the respondent herself and it was not purchased by the second petitioner's husband in the name of the respondent. It is for the plaintiffs to establish their case and the defendant cannot be asked to give evidence out of turn.

6. Considering the rival submissions, the learned trial Judge found that having filed a suit, it is for the petitioners/plaintiffs to prove their case and therefore, the trial Judge has dismissed the petition. Against the said order of dismissal, this Civil Revision Petition is filed.

7. During the course of submission, the learned counsel for the petitioners drew the attention of this Order XVIII Rule 1 of the Civil Procedure Code. Order XVIII Rule 1 reads as follows:

"ORDER XVIII - HEARING OF THE SUIT AND EXAMINATION OF WITNESSES

1. Right to begin

The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin."



8. This Rule speaks that the plaintiff has the Right to begin, unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the plaintiff, the defendant is not entitled to any part of the relief which he seeks and in which case, the defendant has the right to begin. Such a situation does not exist here. Both the parties have taken contradictory position with regard to the title and possession of the property. The petitioners' case is that the second petitioner's husband purchased a property in the name of the respondent/defendant. The case of the respondent/defendant is that she sold the property and got some amount by raising loan and then, she had purchased a property from out of her own funds. These claims and counter claims have to be proved only during the course of the trial. As a dominant litigant, it is for the plaintiffs to initiate the trial process by examining herself and prove her case. The claim of the petitioners that the respondent should begin and prove the respondent's case cannot be accepted for the reason that it is against the established procedure. The trial Judge has rightly dismissed by giving reasons for not entertaining the petition.

9. This Court finds no reasons to interfere with the order passed by the learned Additional District Judge and Sessions Judge-II, Erode in I.A.No.8 of 2020 in O.S.No.193 of 2017 dated 08.04.2021. Accordingly, this Civil Revision Petition stands Dismissed. No costs. Consequently, connected C.M.P.No.11592 of 2021 is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Additional District Judge and
Sessions Judge -II,
Erode.

+1cc to Mr.K.S.Jeyaganeshan, Advocate, S.R.No.38198

C.R.P.NO.1476 OF 2021

PM(CO)
PBS/24/08/2021