

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 11.11.2020]

[ORDERS PRONOUNCED ON : 18.01.2021]

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP (PD).No.1745 of 2020

and

C.M.P.No.10789 of 2020

Visaga Prabhu

... Petitioner

.. Vs ..

1. D.Malathi

2. R.Yasodhai Ramalingam

3. Rajamani

4. Kannappan

... Respondents

PRAYER: Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order made in I.A.No.105 of 2020 in O.S.No.238 of 2016 dated 12.08.2020 on the file of the IIIrd Additional District and Sessions Judge, Tiruppur at Dharapuram.

For Petitioner : Mr.C.Selvaraj

For Respondents : Mr.S.Prasath

ORDER

The 14th defendant in the suit is the revision petitioner herein.

2. the Brief facts of this petition is as follows:-

(a) The first respondent/plaintiff has filed a suit seeking the relief of partition of the suit property and claiming 1/2 share in the schedule property.

(b) The first defendant is the mother of the deceased K.R.Dinesh. While the 14th defendant is the elder brother of the said Dinesh and also the first son of the father Ramalingam (now deceased).

(c) Written statement of the first defendant and 14th defendant have filed and other defendants are being the tenants have been exonerated by the orders of the trial Court in the Interlocutory Application.

(d) After framing necessary issues, P.W.1 was examined and documents were marked.

(e) At this juncture, the 14th defendant has filed I.A.No.105/2020 under Order 7 Rule 11 read with 151 of C.P.C for rejection of the plaint.

(f) The plaintiff/respondent filed counter in the said I.A, and after enquiry, by an order dated 12.08.2020, the learned IIIrd Additional District and Sessions Judge, Tiruppur at Dharapuram has rejected the application and hence, the present revision.

3. Heard the learned counsel for the petitioner and the respondents.

4. The learned counsel for the petitioner/14th defendant could contend that duplicate copy of the plaint was not enclosed and the cause of action was not properly pleaded and there is deficiency in payment of Court Fee and suit claim is barred on legal principle. Since the suit property is H.U.F property without consent of the another coparcenar, a settlement has been executed by one of the co-owner in favour of the other co-owner and hence the same is null and void.

5. Per contra, the learned counsel for the respondent/plaintiff has made submissions in support of the order passed by the trial Court inter-alia contended that the points raised by the defendants are purely in nature of facts regarding which evidence is necessary and further submitted that the plaintiff is the legally wedded wife of the said Dinesh and his mother is the first defendant Yasodha Ramalingam and the

petitioner/14th defendant being brother of deceased is not entitled any share in the property. As the property stands in the name of her deceased husband, on his death the wife and the mother alone are entitled to whose property and the 14th defendant being the brother is not entitled any share and he is not even a necessary part to this partition suit.

6. On perusal of the plaint averment, I find that the 1st respondent/plaintiff claims to be the legally wedded wife of K.R.Dinesh and their marriage took place on 03.06.2013 as per Hindu Religious Caste Customs and they lived together husband and wife. The 1st defendant is his mother. The suit properties are the absolute properties of her husband K.R.Dinesh by virtue of under two registered Settlement Deeds dated 28.03.2014 and 23.06.2014. He was in exclusive possession and enjoyment of the suit property as its absolute owner till his death. Registration copies of two Settlement Deeds are filed as plaint document No.1.

7. The plaint further proceeds to the effect that the plaintiff's husband K.R.Dinesh died intestate in a car accident happened on 22.04.2016 leaving behind him, his wife Malathi (the plaintiff herein) and his mother (1st defendant herein) as his legal heirs. The said

K.R.Dinesh is not having any issues and hence under law the plaintiff and 1st defendant are the only his legal heirs and the plaintiff and 1st defendant are each having half share in the suit properties.

8. As per plaint averments the plaintiff and the 1st defendant are in joint possession and enjoyment of the suit property. Hence, the suit is valid for the purpose of Court Fee and Jurisdiction at Rs.376.00/- and Fixed Court Fee of Rs.750/- is paid under Sec.37(2) of Tamil Nadu Court Fees and Suits Valuation Act 1955.

9. Written statement appears to have been filed wherein the first defendant mother of the deceased Dinesh has raised a plea that the suit claim is based on assumption of valid marriage and the further assumption that the two Settlement Deeds are also valid, however challenged that there is no pleading that the settlers are absolute owners of the settled properties. The main contention in the written statement is that any settlement of any Hindu Joint Family Property by any coparcener including the Kartha in favour of any other coparcener or a third party without the consent and concurrence of all other coparceners is unlawful, unenforceable, ab initio void.

10. As per written statement (a) the plaintiff is not the legally wedded wife of late K.R.Dinesh. The plaintiff's submission that the suit properties are the absolute properties of late K.R.Dinesh is specifically denied. The two Registered Settlement Deeds dated 28.03.2014 and 23.06.2014 are void, inoperative, ineffective, unlawful, null and void ab initio and therefore they are incapable of vesting any right, title or any interest in late K.R.Dinesh).

(b) The properties settled in the name of late K.R.Dinesh is nothing but out of the undivided ancestral coparcenary any Hindu Joint Family property.

(c) Any gift or settlement in respect of any ancestral coparcenary and Hindu Joint Family property by any member of the Hindu Joint Family in favour of any person including another coparcener is absolutely unlawful, unenforceable, null and void eo instanti and void ab initio. Hence, the two Settlement Deeds executed in favour of late K.R.Dinesh by his parents that too without the consent and concurrence and also against the wish of their eldest son, R.Visakaprabu, is ab initio non-est in law, unenforceable and absolutely null and void. Late K.R.Dinesh derived no right, title or any interest or possession, actual or

constructive in the settled properties. Hence all encumbrances or all agreements or all transaction relating to the settled properties between late K.R.Dinesh and any person including the plaintiff and defendants 12 and 13 are all unlawful, unenforceable, null and void eo instanti and void ab initio.

11. Since it is an application filed for rejection of the plaint under Order 7 Rule 11 of C.P.C contents in the written statement cannot be looked into at this stage. Admittedly, the Court has looked into the plaint averment, plaint prayer read with plaint document.

12. At this juncture, it remains to be stated that the trial has already commenced. P.W.1 has already examined and the documents are marked.

13. It appears that in the earlier round of litigation, C.R.P.(PD).No.4217 of 2018 was allowed in that there is a direction issued by this Court on 21.01.2018 to dispose off the suit within a period of six months from the date of receipt of a copy of this order.

14. After the said order, it appears that the present application has been filed by the defendant. Non-filing of duplicate plaint and other points raised by the petitioner appears to be rectifiable defect and alleged

joint enjoyment of the plaintiff with regard to the suit property and payment deficit Court Fee, I find that necessary issues have already been framed by the trial Court.

15. According to the plaint averment, it is averred that the plaintiff is in joint possession and enjoyment of the suit property. Since plaintiff being the widow of the deceased and the first defendant is mother of the deceased, she was arrayed. However, as the present D14 is elder brother, is not entitled to any share in the property of his brother, he was not added as party-defendant in the plaint at first instance.

16. Hence, it appears that he filed an application to implead himself and thereafter he was impleaded and arrayed as a defendant No.14. However, I find there is no prayer has been asked or no relief has been asked in the plaint as against the 14th defendant also assumes significance.

17 (a). From the order passed by the trial Court, I find that cross examination of P.W.1 has also been over. Hence, at this stage, whether the plaint averments are proved in the manner known to law is for matter for trial.

(b) As per the plaint averment by virtue of two Settlement Deeds dated 28.03.2014 and 23.06.2014 are the Registered Deeds said to have been effected in favour of the K.R.Dinesh namely the husband of the petitioner/plaintiff. The said Dinesh has died on 03.06.2016. Marriage invitation was filed namely 03.06.2013. Registration Certificate is plaint document No.1 and

(c) hence, I find that based upon the plaint Document Nos.2&3 and the said Dinesh said to have been married to the plaintiff as per the plaint Document No.1 and died on 03.06.2016 as per Document No.4 and suit prayer is for the relief of partition of half share in respect of the property covered under the above Settlement Deeds.

18. Be that as it may. According to the 14th defendant, two Settlement Deeds are relied on the plaint, as of no legal consequence, since the property is a undivided property of family without consent one co-owner cannot execute the settlement in favour of the another co-owner. In other words, he challenge the suit Document Nos.2&3. However the same can be gone into by the trial Court, after recording evidence.

19. As I find the said plea as to the nature and character of the suit property has to be gone into by adducing evidence whether two Settlement Deeds dated 28.03.2014 and 23.06.2014 are true and valid is also matter for evidence. Hence, I find out except the question of valuation none of the points raised by the 14th defendant comes under purview of rejection of the plaint under Order 7 Rule 11 of C.P.C.

20 (a). Furthermore in respect of other defects which are curable in nature viz., whether the Court Fee has properly paid or not. Since already the trial has commenced and the P.W.1 has already been cross-examined, the trial Court is hereby directed to decide the said issue and if there is a deficiency in the Court Fee, the plaintiff shall be called upon to pay the defective Court fee amount, if any, within the stipulated time as prescribed under the Civil Rules of Practice.

(b). Thus, I find that all the points raised by the petitioner herein does not come within the scope of the enquiry under Order 7 Rule 11 of C.P.C. The order passed by the trial Court, for different reasoning, is hereby confirmed and hence, the C.R.P is devoid of merits.

21. Hence, this Civil Revision Petition is dismissed with costs.

The trial Court is hereby directed to dispose of the suit as per the direction stated in the above C.R.P.No.4217 of 2018. Consequently, connected C.M.P is closed.

18.01.2021

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Speaking Order: Yes

Internet: Yes

Index: Yes

To
The IIIrd Additional District and Sessions Judge,
Tiruppur at Dharapuram.

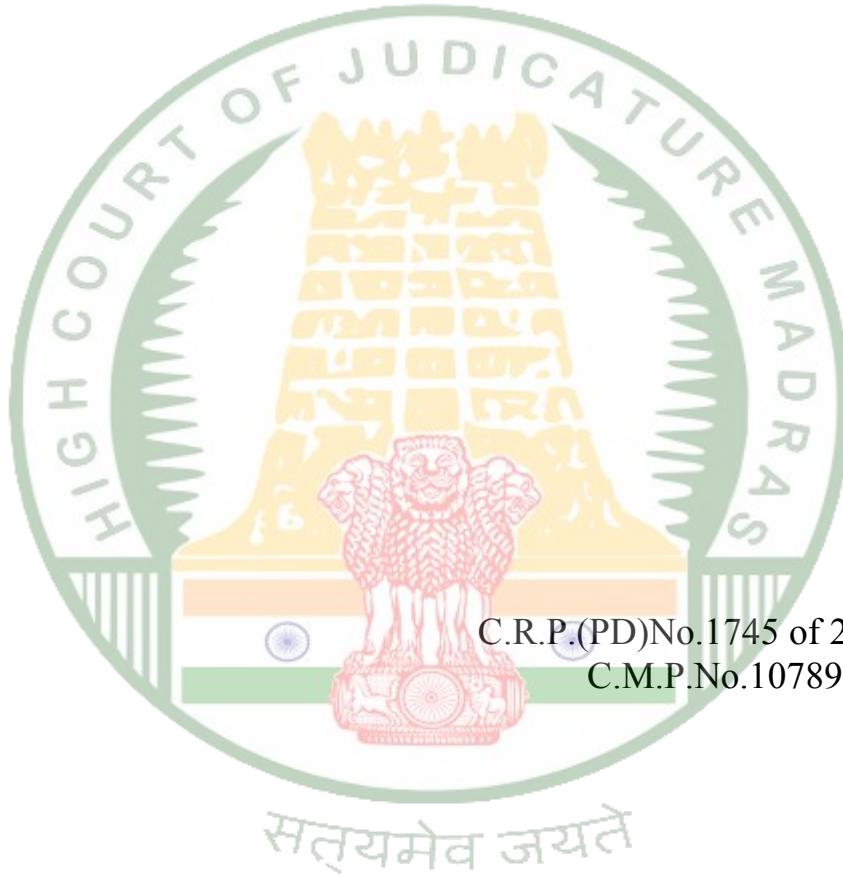
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RMT.TEEKAA RAMAN,J.,

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