

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order 08.10.2021	Date of Pronouncing Order 25.10.2021
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CORAM:

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD)No.1602 of 2021
and CMP.No.12458 of 2021

P.G. Sathish

...Petitioner

Versus

1. A.V.Palanisamy

2. Malarvizhi

3. Boobalu

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the Judgment and Decree dated 03.12.2020 made in C.M.A.No.06 of 2018 on the file of the Learned III Additional District and Sessions Judge, Erode 14.06.2018 made in I.A.No.311 of 2018 in O.S.NO.80 of 2018 on the file of the learned Subordinate Judge at Sathyamangalam.

For Petitioner : Mrs. Chitra Sampath Senior Advocate
for Mr.T.L.Thirumalaisamy

For R1 to R3 : Mr.A. Thiyagarayan Senior Advocate
for Mr.D.Veerasekaran

ORDER

This Civil Revision petition is filed challenging the order passed in the Civil Miscellaneous Appeal 6 of 2018 on the file of the III Additional Session Judge Erode at Gopichettypalaiyam confirming the order passed by the learned Subordinate Judge at Sathiyamangalam dated 14.06.2018 made in I.A.No.311 of 2018 in O.S.No.80 of 2018.

2. The learned counsel for the petitioner submitted that the petitioner filed the suit in O.S.No.4 of 2017 against his father N.K. Gopal, sister K.G. Gowri, his father's second wife Maragathamani and Sub Registrar Puliyampatti seeking relief of partition and restraining the Sub Registrar not to register any document in respect of the suit properties till the partition is effected. During the pendency of the suit, his father executed the sale deed in respect of the suit property in favour of his sister Saraswathy and therefore she was impleaded as 5th defendant. Saraswathy died during the pendency of the suit and her legal

heirs had been impleaded as D6 to D8. D6 to D8 are the respondents in this petition and plaintiffs in O.S.No.80 of 2018.

3. The petitioner filed the suit for partition alleging that the suit properties are ancestral joint family properties and purchased out of the income derived from ancestral joint family properties. The petitioner's father N.K.Gopal and his father Karuppa gounder owned property in Survey No.483/4A to an extent of 1.09 acres. Karuppa gounder purchased properties in Survey Nos.575 and in Survey No.576 to an extent of 2.50 3/4 acres in the year 1952. Karuppa gounder executed settlement in favour of petitioner's father in respect of 40 cents in survey No. 575. Karuppa gounder died in the year 1982 and his father, his sister Saraswathy, Marathal Mother succeeded to his properties. His father was married to Easwari in 1982. His mother Easwari received 75 Sovereign of Gold as a dowry. His father out of income from derived from ancestral properties left by Karuppa gounder and by spending jewels obtained as a dowry from his wife purchased several properties, namely the suit properties. The suit properties are enjoyed by petitioner, his father, mother and Saraswathy. His father exchanged the ancestral properties in R.S.No.483/4A to an extent of 1.09 acres with K.Shanmugam for the properties

in R.S. No.484/4B to an extent of 0.26 cents, R.S.No.484/5B to an extent 25 cents and R.S.No.484/7B to an extent of 58 cents. His father's sister P.Saraswathi executed two release deeds in which she has clearly stated that the suit property in R.S.No.483/4A is ancestral property and her father Karuppa gounder has purchased some properties in R.S.No.575 and in R.S.No.576 and they have enjoyed the same as joint family properties. Through these release deeds, she relinquished all the rights in favour of his father. Therefore, the said exchange deed and release deed clearly prove that the suit properties are joint family properties and properties purchased out of income derived from joint family properties. However, there was misunderstanding between the petitioner and his father. His father executed settlement deed in respect of the suit properties in favour of his sister Saraswathy. His father is not prepared to give his share in the partition. He filed I.A.No.79 of 2017 under Order 39 Rule 1 and 2 and Section 151 of C.P.C., restraining the defendants from alienating or encumbering the suit properties till the disposal of the suit. After the contest the petition was allowed. The settlement deed in favour of Saraswathy was executed by his father after filing the Suit in O.S.No.4 of 2017 and after filing of I.A.No79 of 2017 for injunction restraining, the respondent from alienating or encumbering the suit property. Therefore, settlement deed executed by his father in favour of Saraswathy is hit by lis pendens.

4. It is further submitted that taking advantage of the settlement deed in favour of Saraswathy, her legal heirs are now attempting to interfere with the possession and enjoyment of the suit properties by the petitioner. They filed O.S.No.80 of 2018 for the relief declaration of their possession and injunction restraining the petitioner from interfering with their possession. They mainly claim their right and possession on the basis of the settlement deed dated 02.02.2017. As submitted earlier this settlement deed is hit by lis pendens and therefore, the respondents cannot claim any right on the basis of the settlement deed.

5. The respondent also filed I.A.No.311 of 2018 and Order 39 Rule 1 and 2 and Section 151 of C.P.C., temporary injunction. This petition was hotly contested by the petitioner. However, without considering the merits of the petitioner's case, I.A.No.311 of 2018 was allowed, granting temporary injunction in favour of the respondents, till the disposal of the suit. Aggrieved against the said order, the petitioner preferred C.M.A.No.06/2018 on the file of the III Additional District and Sessions Judge Erode. The learned III Additional District and Sessions Judge, Erode has also not considered the merits of the case and dismissed the Civil Miscellaneous Appeal. Against the said order of

dismissal, this Civil Revision Petition is preferred.

6. The learned counsel for the petitioner submitted that at the risk of repetition, the respondents claim right and possession in respect of the suit properties on the basis of settlement deed dated 02.07.2017 that came into existence during the pendency of O.S.No.4 of 2007, especially when there was injunction order granted in I.A.No.79 of 2017 restraining petitioner's father not to encumber or alienate the suit property. The petitioner is in actual possession and enjoyment of the suit property. Without properly considering the claim of the title, possession and petitioners right as owner of the suit properties and the person in possession of the suit property, both the Courts have wrongly rejected the case of the petitioner. It is also submitted that the order of the learned Appellate Court Judge shows that the order was delivered on 03.12.2020. The Preliminary paragraph shows that counsel for parties were heard on 20.02.2020. It shows that order was pronounced nearly ten months after hearing. In fact, the petitioner counsel was not heard before passing orders. The order was passed without hearing is not maintainable. For all these reasons, the learned counsel for the petitioner prayed for setting aside the order passed in C.M.A.No.06/2018 and for dismissing I.A.No.311 of 2018.

7. In response, the learned counsel for the respondents submitted that the properties are not ancestral joint family properties or properties purchased out of income derived from ancestral joint family properties. The ancestral properties of petitioner's father was limited only to a small extent and those lands are not fertile lands. They are the rain fed lands and there was not much income derived from those lands. In fact, petitioner's father earned money by the stint of his hard work. He started Maligai shop and then liquor shop and did various business activities. Out of his personal efforts and labour, he had earned money from his business activities and purchased properties in his name. The properties purchased in his name are his self acquired properties.

8. He settled the suit properties in O.S.No.80 of 2018 in favour of his sister Saraswathy. Saraswathy and after her death, the respondents are in possession and enjoyment of the suit properties in O.S.No.80 of 2018. When the petitioner tried to interfere with their possession and enjoyment of the suit properties, they filed suit in O.S.No.80 of 2018 and I.A.No.311 of 2018 for temporary injunction. On going through the documents produced in support of the respondents claim, the learned Subordinate Judge, Sathiyamangalam granted temporary injunction restraining the petitioner from interfering with

respondents possession and enjoyment of the suit properties. That order was confirmed in C.M.A.No.6 of 2018. The petitioner is influential person and he is taking law into his own lands and trying to encroach upon the suit properties. Therefore, the respondents filed complaint before Judicial Magistrate Court and filed petition before this Court seeking police protection. Despite, all these efforts, petitioner is still trying to interfere with the possession and enjoyment of the suit properties by the respondents. Therefore, the learned counsel for the respondents prayed for dismissal of this petition, confirming the order of the Courts below.

9. Considered rival submissions and perused of records.

10. During the enquiry before the Trial Court in I.A.No.311 of 2018, the respondents have produced Exhibits P-1 to P-20 documents and petitioner has produced Exhibits R-1 to R-7 documents. Documents P.1 to 4 are the sale deeds in favour of respondent's father N.K. Gopal, document 5 relate to settlement deed dated 02.02.2017 and documents Nos.P.6,7,12,13,14,15,16 and 17 are patta, A register and the documents to show the possession of the respondents. Whereas, petitioner produced the copy of the plaint in O.S.No.04 of 2017. R2 to R4 are the copies of Interlocutory Applications filed in

O.S.No.04 of 2017 and document No.5 and 6 are the valaikappu and receipts relate to K.G.Mandapam. Analyzing the documents produced by both the sides, the trial Court found that the documents filed by the petitioner do not relate to his possession and enjoyment of the suit properties. On the other hand, respondents produced the documents to show their possession and enjoyment of the suit properties. Noting that respondents had prima facie showed that they are in possession and enjoyment of the suit properties, the learned trial Court Judge ordered temporary injunction till the disposal of the suit and that was also confirmed by the learned Appellate Court Judge.

11. Even as per admitted case of the petitioner, almost all the suit properties were purchased in the name of his father N.K.Gopal. Of-course there are certain ancestral properties available with his father and the question now here is whether the ancestral properties yielded income, if so whether the income is sufficient enough to purchase other properties. There are almost 37 properties stand in the name of his father. In the written statement filed in O.S.No.4 of 2017 his father has stated that he started Maligai shop in 1972. In the year 1972, the Government of Tamil Nadu granted license to run toddy shop till 1980. He also started cycle shop, got license to run a Brandy shop till 1980. From all these shops he earned money. From this income, he alleged that

he purchased properties in his name. Petitioner has not in any way involved in these businesses. He was educated in various schools and not completed L.L.B., course. The sum and substance of his father case is that the suit properties are his self acquired properties and he has every right to execute the settlement deed in favour of his sister. The claim of the learned counsel for the petitioner that in the exchange deed and release deed executed by Saraswathy in favour of petitioner's father and in the sale deed executed by petitioner, his father and sister, the properties had been claimed as ancestral properties has to be subjected to proof by evidence. In the absence of any other corroborative evidence, mere recitals in the documents is not a conclusive proof for deciding that the properties purchased in the name of the petitioner's father had been purchased from the income derived from the joint family properties.

12. When there are voluminous documents available to show the suit properties are purchased by the father of the petitioner and there is no convincing evidence to show that the ancestral properties derived income sufficient enough to purchase these properties, prima facie we have to hold that the suit properties are the self acquired properties of petitioner's father. Therefore, he is entitled to execute settlement deed in respect of his self acquired properties. The claim that the settlement deed dated 02.02.2017 is hit

by lis-pendens is liable to be rejected for the reason that the suit in O.S.No.4 of 2017 was filed on 11.01.2017. Notice in I.A.No.79 of 2017 was ordered returnable by 07.02.2017. Only on 07.02.2017 parties entered appearance. Meanwhile the settlement deed came to be executed on 02.02.2017. Therefore, the settlement deed dated 02.02.2017 cannot be considered as lis-pendens transaction. Lis-pendens transactions are not altogether prohibited. The transferee get right subject only to result of the suit and subject to right of the transferor declared by the Court. However this matter is left open to be decided during the trial.

13. On going through the material produced before the trial Court, the learned trial Judge has rightly found that the respondents produced the documents to show their possession on the date of filing the suit and granted temporary injunction. Of-course there is some discrepancy in the order of Appellate Court as to the date of submission of arguments of the parties and the date of pronouncement of order. It is not known why this discrepancy in the dates. However, the order reads that the counsel for the both the parties were heard on 20.02.2020 and the order was pronounced only on 03.12.2020. May be due to the prevailing Pandemic situation and staggering functioning of the Court, this delay might have been caused. The fact remains that after hearing

parties on 20.02.2020, the matter was not re-opened. Only the order was pronounced on 03.12.2020. It can be considered only as the delay in pronouncing order and not the denial of the opportunity of hearing to the parties. The learned Appellate Court Judge has also found that there is no reason to interfere with the order of the Trial Court Judge and confirmed the order.

14. The learned counsel for the respondents have also brought to the notice of this Court the complaint given by the third respondent to the police on 13.12.2020 and 18.12.2020, complaint given by the third respondent to the Judicial Magistrate Saythiamangalam on 22.01.2021, the order made in CrI.O.P.No.4009 of 2021, to register a case, the order in W.P.No.11185 of 2021 for Police Protection, F.I.R filed in Crime.No.306 of 2021 under section 143, 341, 506(1) of I.P.C., against the petitioner. These proceedings had come into existence after the disposal of I.A.No.311 of 2018. These documents are relevant to take note of the subsequent events with regard to the dispute between the parties, in the matter of enjoying the suit properties. As said above, the respondents have made out the prima facie case that they are in possession and enjoyment of suit properties on the date of the filing of the suit, on the basis of the settlement deed dated 02.02.2017 executed by the petitioner's father

in favour of respondents' mother.

15. Therefore, this Court finds no reason to interfere with the order of the learned Appellate Judge in C.M.A.No.6 of 2018 and the order of the learned Appellate Court Judge is confirmed.

16. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

25.10.2021

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Index: Yes/ No
Speaking Order / Non-Speaking Order

Note: Issue Order copy on **29.10.2021.**

To

The III Additional District & Sessions Judge,
Gobichettipalayam.

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G.CHANDRASEKHARAN, J.,

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Pre-delivery order in
C.R.P.(PD)No.1602 of 2021

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Dated:25.10.2021