

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

**C.R.P(PD).No.2210 of 2020
and
C.M.P.No.13910 of 2020**

1.M.Govindaraj
2.R.Sugandhi

...Petitioners

Vs

G.Anbarasan

...Respondent

Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 29.11.2019 made in I.A.No.80 of 2019 in O.S.No.32 of 2018 on the file of the District Sessions Court, Tiruvarur.

For Petitioners : Mr.V.Chandraprabhu

For Respondent : M/s.P.T.Ramadevi

ORDER

Heard Mr.V.Chandrababhu, learned counsel appearing for the petitioners and Ms.P.T.Ramadevi, learned counsel appearing for the respondent.

2.The defendants in O.S.No.32 of 2018 which is now pending on the file of the District Court, Tiruvarur are the present revision petitioners. O.S.No.32 of 2018 is a suit filed for partition and separate possession. The plaintiff is the son of the first defendant. The second defendant is the daughter of the first defendant and sister of the plaintiff. In the plaint, the plaintiff had stated that the schedule mentioned properties originally belonged to the grandfather and after the death of the grandfather, there was an oral partition among his sons. The properties mentioned in the schedule had devolved on to the first defendant.

3.This statement in the plaint is seriously questioned, rather taken advantage of by Mr.V.Chandrababhu in the present revision petition. There is also another averment in the plaint that the first defendant by a registered

settlement deed dated 25.08.2016 had settled the property in favour of the second defendant/sister of the plaintiff. This statement in the plaint is also taken advantage of by Mr.Chandraprabhu. Taking advantage of these two statements in the plaint, namely, there was oral partition effected among the first defendant and his brothers and that subsequently the the first defendant had settled the property which had been allotted to him under the oral partition in favour of the second defendant, the defendants filed I.A.No.80 of 2019 under Order VII Rule 11 of CPC seeking to reject the plaint. They relied on sub-clauses (a), (b) and (d) of Order VII Rule 11 CPC.

4.With respect of Order VII Rule 11 CPC, sub-clause (a), it had been contended in the affidavit filed in support of the petition that there is no cause of action to institute the suit owing to the fact that since the oral partition had been effected among the first defendant and his brothers, the property which is in the schedule of the plaint had become the absolute property of the first defendant and therefore not available for partition as long as the first defendant is alive. It had therefore being contended that the suit seeking partition and separate possession is not maintainable and the

plaintiff cannot claim that a cause of action exists after pleading oral partition. It had been actually contended that if the plaintiff claims partition, the plaint will have to be necessarily rejected as the relief for partition and that the claim that the property had already been partitioned orally will be mutually destructive to each other. It is also contended that the plaint discloses that the property had been settled by the first defendant in favour of the second defendant and therefore without seeking any relief to set aside that particular settlement deed, a suit for partition is again not maintainable and a cause of action cannot be maintained for partition in view of the fact that the settlement deed will act as an obstruction to grant any relief of partition.

5. With respect to clause (b) of Rule 11 in Order VII of CPC, it had been stated that the value of the property had been incorrectly given and that the plaintiff claiming to be in possession had taken advantage of Section 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 and had paid a fixed Court fee of Rs.5,000/-, whereas, since he had stated about the settlement deed which deed by its very nature grants possession to the

settlee on the date of the deed itself would indicate that the plaintiff is not in possession and therefore the plaintiff should have valued the suit under Section 37(1) of the Tamil Nadu Court Fees and Suit Valuation Act.

6. With respect to clause (d) of Rule 11 of Order VII of CPC, it had been contended that Section 8 of the Hindu Succession Act gives the manner in which the property is to devolve in the case of intestate succession. It is stated that since the first defendant is still alive, issue of opening up of succession does not arise and the plaintiff cannot seek partition of the suit schedule property.

7. The learned District Sessions Judge, Tiruvarur, however had dismissed the said application primarily holding that all these aspects are to be taken up for trial and the plaint cannot be rejected at the preliminary stage.

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8. Questioning this order, the present Civil Revision Petition has been filed.

9.Mr.V.Chandrababhu, the learned counsel again reiterated the very same aspects. The learned counsel pointed out the mutually destructive averments on the plaint regarding oral partition and simultaneously seeking partition of the plaintiff. He also pointed out that the plaintiff himself had admitted about the settlement deed having been executed by the first defendant in favour of the second defendant and therefore contended that the plaintiff cannot claim to be in possession of the property and take advantage of Section 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 with respect of payment of Court fees. The learned counsel also pointed out that no relief has been sought for to set aside the settlement deed and therefore, it is highly improbable that relief of partition can be granted to the plaintiff.

10.I have carefully examined the arguments advanced by Mr.V.Chandrababhu, learned counsel for the petitioners. The presence of Ms.P.T.Ramadevi, learned counsel for the respondent is also acknowledged but the learned counsel was not called for.

11.I really appreciate the arguments advanced by Mr.V.Chandrababhu. But it would only be appropriate that the plaintiff is given an opportunity to explain as to what actually he meant in the plaint with respect to oral partition of the property among the sons of his grandfather. The details of the oral partition have not been stated. If the plaintiff is to rely on the oral partition, then he would have to give the date of such partition and the specific properties which had been divided and partitioned and the manner in which such properties have been allocated among the parties. If that is not proved, then there is every possibility that the property would revert back to taking the character of an ancestral property. This is a very dicey situation. It all depends upon the nature of evidence that the plaintiff would lead. I do appreciate that if an oral partition is to be upheld, then the plaintiff will have to wait and thereafter claim his right as an intestate heir of the first defendant. However, the further issue is about the settlement deed which has been executed by the first defendant in favour of the second defendant. That fact is also disclosed in the plaint. To that extent, it should be appreciated that all the necessary

facts have been disclosed whether they work against the interest of the plaintiff or not. There is no issue of suppression of any material facts in the plaint. It is for the plaintiff to explain how he is going to get around that particular settlement deed. He may even opt to claim that the said settlement deed is not binding on him. He may even choose to ignore it but as pointed out by Mr.V.Chandrababu, it is a registered document and unless there is an order of Court questioning the legality of the said document, the said document would stare in the face of the plaintiff. Since the matter goes both ways, it would be only in the interest of justice that the plaintiff is afforded an opportunity to explain all these aspects in the witness box.

12. With respect to the issue of possession and valuation of the suit, the issue of possession will have to be examined only on the nature of evidence which is tendered in Court not only by the plaintiff but also by the second defendant who is the settlee and whether the second defendant claims to be in possession or the plaintiff is also in possession and again, these are issues which can be decided only in the course of trial.

13.In view of the above aspects, it would only be advisable that the suit is permitted to run its own course. The non-suiting of the plaintiff at the preliminary stage may not to the advantage either to the plaintiff or the defendants. A suit of this nature is always liable to come up again at a later point of time. So it is only better that the defendants face the present suit and permit the plaintiff to lead evidence and test his statement during cross examination. That would give more effective quietus to the suit rather than rejecting it at the preliminary stage.

14.With these observations, I uphold the order of the learned Judge and put the parties to trial and invite the plaintiff to test his statement during his evidence. The Civil Revision Petition is dismissed accordingly. No order as to costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Internet: Yes/No

C.V.KARTHIKEYAN, J,

cse

To

The District Sessions Judge,
Tiruvarur.



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