IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD) No. 4041 of 2018
and
CMP No.22343 of 2018

1. Ponnusamy
2. Thangaraj
3. Gowri .... Petitioners

Vs

1. Mohamani
2. Veerammal .... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 24.10.2018 made in I.A.No.396 of 2018 in O.S.No.452 of 2013 on the file of the II Additional Subordinate Court, Erode.

For Petitioners : Mr. K.Govi Ganesan
For R1 : Mr.V.S.Kesavan
For R2 : No appearance

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 24.10.2018 made in I.A.No.396 of 2018 in O.S.No.452 of

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2013 on the file of the II Additional Subordinate Court, Erode, thereby allowing the petition to commence the trial by the defendants.

2. The petitioners are the defendants and the first respondent is the plaintiff. The first respondent filed suit in O.S.No.452 of 2013 for partition. While pending the suit, the first respondent filed a petition in I.A.No.396 of 2018 for direction directing the petitioners to begin the trial for the reason that the first respondent set up a Will dated 29.10.1993 alleged to have been executed by his mother with regard to the 'B' schedule property in favour of the first and second petitioner and as such, they are bound to prove the alleged Will in the manner known to law. In respect of 'A' schedule property, the petitioners 1 and 2 pleaded oral relinquishment in their written statement. Further they also pleaded that as if the first respondent herein received a sum of Rs.2,00,000/- from the first petitioner herein. Therefore, sought direction to the petitioners 1 and 2 to begin the trial.

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3. In this regard, it is relevant to rely upon the Judgment rendered by the Hon'ble Division Bench of this Court reported in ***2010 (6) CTC 225*** in the case of ***Baja Auto Limited V. TVS Motor Company***

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Limited, in which, this Court categorically held that the defendant cannot compel to begin the trial if they are not willing to begin the trial.

> *"24. The issues raised in these appeals revolve around the interpretation of Order 18 Rule 1 and 2 CPC.*
>
> *25. Order 18(1) of CPC deals with hearing of the suit and examination of witnesses. The provision reads thus:*
>
> *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.*
>
> *26. The provisions of Order 18 CPC indicates the normal method of production of evidence and the arguments by either parties.*
>
> *27. The term "right to begin" is not merely a right. It is rather a duty or legal obligation. It is so because the plaintiff has to win or lose the case on the basis of his own case and not on the weakness of the defendant's case.*
>
> *28. Order 18 Rule 1 CPC is concerned not only with the production of evidence. It is a composite provision dealing with the right to begin a case in general. This includes the production of evidence as well as addressing the Court by oral arguments. Though Order 18 Rule 1 CPC provides in*

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general about the right to begin, Rule 2 of Order 18 deals with opening the case and production of evidence. A combined reading of Rules 1 and 2 of Order 18 CPC would show that the person who got a right to begin must lead evidence first. As per the statutory scheme, the plaintiff is given the right to begin the case. This right would not give the plaintiff a further right to compel the defendant to produce his evidence at the first instance. The question of defendant beginning the case would arise only in cases wherein the defendant admits the facts alleged in the plaint and contends that either on point of law or on some additional facts alleged by him, the plaintiff is not entitled to any part of the relief which he seeks. It is only in such circumstances, the defendant gets the right to begin. Therefore, the "right", as defined in Rule 1 of Order 18 would not really be a "right" and is essentially a legal obligation to prove the case.

29. There are exceptions to this Rule like the case relating to promissory notes. In a suit on promissory notes, if the defendant admits execution, the burden would shift to him to prove the discharge. Section 18 of the Negotiable Instruments Act provides that until the contrary is proved, the Court shall presume that every negotiable instrument or debt was made or drawn as shown in the document. In such

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cases, the burden is on the opposite party to lead evidence that the negotiable instrument was made without consideration".

4. In view of the above, the order dated 24.10.2018 made in I.A.No.396 of 2018 in O.S.No.452 of 2013 on the file of the II Additional Subordinate Court, Erode, is hereby set aside. The suit is of the year 2013. The Trial Court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order.

5. With the above directions, this Civil Revision Petition stands allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

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Index:Yes/No
Internet:Yes/No
Speaking Order: Yes/No
To

1. The II Additional Subordinate Judge,
   Erode.
2. The Section Officer,
   V.R.Section, High Court, Erode.

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G.K.ILANTHIRAIYAN.J,

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