



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.09.2021

Delivered on : 25.11.2021

CORAM:

THE HONOURABLE **MRS. JUSTICE R. THARANI**

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C.M.A(MD) No.1350 of 2013

and

M.P.(MD) No.1 of 2013

P.Baskar

... Petitioner/Plaintiff/ Appellant

Vs.

1.P.Manivannan

2.P.Bhoopalan

3.J.Vasantha

4.Anusamy

5.Vanaja

6.P.Kalavathy

... Respondents/ Defendants/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Order XLIII, Rule 1 r/w. Section 104 of the Code of Civil Procedure, against the order and decretal order, dated 11.03.2013, in I.A.No.48 of 2012, in O.S.No.24 of 2011, on the file of the 1st Additional Sessions Judge (Protection of Civil Rights), Thanjavur.

For Appellant	: Ms.AL.Gandhimathi
For R1	: Mr.S.Deenadhayalan
For R3	: Mr.V.Sasikumar
For R2,4, 5 &6	: No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order, dated 11.03.2013, in I.A.No.48 of 2012, in O.S.No.24 of 2011, on the file of the 1st Additional Sessions Judge (Protection of Civil Rights), Thanjavur.

2.The appellant herein is the plaintiff in the suit and the petitioner in the I.A. petition and the respondents herein are the defendants in the suit and the respondents in the I.A. petition. The appellant herein filed a suit in O.S.No.24 of 2011 for partition and for allotment of 1/15th share in the suit properties and for other reliefs. During the pendency of the suit, the plaintiff filed a petition in I.A.No.48 of 2012, under Order 39 Rule 1 and 2 of C.P.C., to pass an order of temporary injunction, restraining the defendants from encumbering the suit properties, till the disposal of the suit. That petition was dismissed by the trial Court.



Against the same, the plaintiff / appellant has preferred this Civil Miscellaneous Appeal.

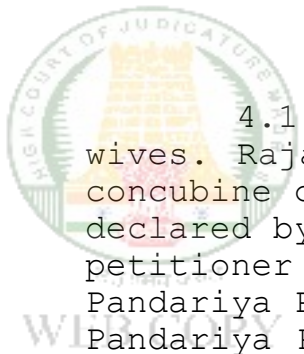
3. Brief substance of the petition, in I.A.No.48 of 2012, is as follows:-

3.1. The suit is filed for partition and for separate possession. The suit properties originally belong to the father of the plaintiff / petitioner viz., Sri Pandariya Pillai. Sri Pandariya Pillai had two wives. The petitioner and the defendants 7 to 13 and Smt. Mallika (wife of the 14th defendant) are the sons and daughters born through the second wife of Sri Pandariya Pillai, viz., Rajammal. Mallika died leaving behind her husband and sons / defendants 14 to 16. The defendants 1 to 3, 5 and 6 are the sons and daughters of Sri Pandariya Pillai, through the first wife / Pappathy ammal.

3.2. Sri Pandariya Pillai died intestate on 02.11.1986. Both his wives died subsequently, the suit properties are in joint possession and enjoyment of all the parties and remain undivided. In the month of May-2002, the legal heirs of Sri Pandariya Pillai decided to divide the properties in an amicable manner. A family arrangement of partition was entered on 06.05.2002. All the parties have signed the agreement in the presence of witnesses and panchayathars. As per the agreement, they agreed to execute a registered partition deed and to divide the properties by metes and bounds.

3.3. Sri Pandariya Pillai, was doing business on manufacturing oil soap under the name and style of "Power Light Soap". After his demise, the defendants 1 to 3, 5, 7, 9 and 13 were carrying on the business under the name and style of M/s. Pandariya Pillai and sons power light soap. Due to some misunderstanding and non-cooperation among the family members, they stopped the manufacturing and the factory remain closed. The defendants 1 to 6 are attempting to alienate and encumber the properties without disclosing the petitioner's title and interest in the properties. They indulged in acts of manipulating records and documents and also attempting to procure patta and other revenue records in their names with an ulterior motive to defraud the lawful claim of the plaintiff. During the first week of May-2011, the defendants 1 to 6 took some strangers to the suit properties and indulged in negotiation of sale of properties. The sale was prevented by the petitioner. There is a chance for the defendants to alienate or encumber the properties adverse to the interest of the plaintiff and the defendants 7 to 16 and an order of permanent injunction restraining the defendants from alienating and encumbering the properties till the disposal of the suit is necessary.

4. Brief substance of the counter filed by the first respondent, in I.A.No.48 of 2012 is as follows:-



4.1. It is false to say that Pandariya Pillai, married two wives. Rajammal, was not the wife of Pandariya Pillai, she was a concubine of Pandariya Pillai for some period and the same has been declared by Pandariya Pillai himself and the children including the petitioner born through the concubine cannot be the legal heirs of Pandariya Pillai. Only the defendants 1 to 6 are the legal heirs of Pandariya Pillai. Pandariya Pillai had executed a settlement deed, dated 08.10.1953 and he gave certain properties to his concubine/ Rajammal and the settlement deed was also accepted by Rajammal and on the same day, she has executed a release deed in favour of Pandariya Pillai, in which, she has categorically admitted that she is only a concubine of Pandariya Pillai and she has taken properties and she will not claim any properties of Pandariya Pillai.

4.2. Pandariya Pillai has executed another settlement deed, in favour of Rajammal on 18.07.1962, wherein, the previous settlement deed was mentioned and the status of Rajammal was mentioned as a concubine. Joint possession of the defendants 7 to 16 and the plaintiff, is a wrong statement. The alleged agreement, dated 06.05.2002 was not proved. The first and the second defendants entered into a partition and they almost sold the properties prior to the date of filing of the suit. The suit claim is barred by limitation and the petition is not maintainable.

5. Brief substance of the counter filed by the second respondent, in I.A.No.48 of 2012 is as follows:-

The said Rajammal is not the second wife of Pandariya Pillai and Pandariya Pillai himself has declared that she is only a concubine. The children of concubine cannot be the legal heirs of Pandariya Pillai. Only the defendants 1 to 6 are the legal heirs of Pandariya Pillai. The plaintiff and the defendants 7 to 16 have no vested rights over the suit properties. The agreement dated 06.05.2002 is void and unenforceable and this petition is not sustainable.

6. Brief substance of the counter filed by the third respondent, in I.A.No.48 of 2012 is as follows:-

The averments in the petition are false. It is false to say that the third respondent was present with the other respondents in the first week of May 2011 at Kumbakonam for selling the properties of her father. This respondent has no inclination to sell any portion of the properties of her father. The defendants 4, 14 and 16 are not necessary parties to the suit. This respondent is entitled to 1/5th share in the properties of Pandariya Pillai. The plaintiff is not entitled for any claim or share in the properties. The respondents 1 and 2 and their men should be restrained by an order of temporary injunction and not this respondent.

7. The trial Court, after considering both sides, has ~~dismissed the~~ petition. Against the same, the petitioner /



appellant has approached this Court by way of this Appeal.

8. On the side of the appellant, it is stated that the trial Court failed to consider that there was no dispute that the appellant and the defendants 7 to 13 and the wife of 14th defendant in the suit were the children of Rajammal and Pandariya Pillai and their right would not be lost by the alleged release deed executed by Rajammal. The truth and genuineness legalities and enforceability of the said release deed and its binding nature on the children can be decided only at the time of trial. The trial Court failed to appreciate the case in view of the balance of convenience and irreparable injury that would be caused to the appellant, if injunction was not granted. The trial Court failed to consider the encumbrance certificate produced by the appellant, which show that the respondents were alienating the properties. The first respondent has already sold substantial portion of 'A' schedule property and the subsequent purchaser has demolished the building and the second respondent has also sold item No.14 of 'A' schedule property. Both of them intend to alienate the remaining properties and prayed the order to be set aside.

9. On the side of the appellant, it is further stated that all the properties are the self acquired properties of Pandariya Pillai and the plaintiff and the defendants are co-sharers. The defendants 1 and 2 are trying to alienate the property. A sale deed was marked as Ex.P1. Settlement deed executed in favour of the second wife / Rajammal was marked as Ex.R1. Ex.R2 is the release deed executed by the second wife / Rajammal, undertaking that she will not claim any property for herself or for her minors. It is further argued that even if the mother has executed an undertaking in the release deed on behalf of the minors, the right of the minors cannot be curtailed by the release deed. The finding of the trial Court is not correct and the order has to be set aside.

10. On the side of the respondents 1 and 2, it is stated that the trial Court rightly dismissed the I.A. petition. The plaintiff and the defendants 7 to 14 are claiming title through the concubine of Pandariya Pillai. In Ex.P6, Pandariya Pillai himself has admitted that Rajammal is only a concubine. Rajammal has executed a release deed admitting that she will not claim any right for herself and for her minors and she has also admitted that she was only a concubine. Three documents were filed to prove the status of Rajammal. The plaintiff and the defendants 7 to 16 cannot seek injunction against the first respondent or other legal heirs through Rajammal. Rajammal lived as a concubine, only for a period of six years and there is no possibility of having 10 children within a period of six years.

11. On the side of the third respondent, it is stated that Rajammal is only a concubine, there is a document, wherein, Rajammal
<https://hccases.adms.gov.in/cases/viewcase> she will not claim any right for herself or for

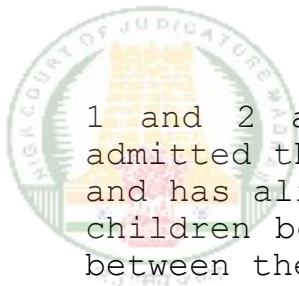


her children. Already so many properties were settled in favour of Rajammal. Hence, the plaintiff and the defendants 7 to 16 cannot claim any right. Rajammal and her children are estopped from claiming any right over the property. The plaintiff just want to extract money from the defendants 1 to 6. The fourth defendant was set aflame due to the dowry harassment of her husband, so he is not entitled to a share in the property. One of the brother viz., Baskaran sold the property in favour of one Veeramani and the said Veeramani has filed a suit for injunction. A petition to implead the said subsequent purchaser Veeramani, in this C.M.A. is dismissed. A subsequent purchaser has no right to implead in a revision petition. A judgment reported in 2011-A.I.R.-Delhi-89 is cited. Baskaran is not the legal representative of Pandaria Pillai, he cannot file a partition suit, he cannot file a petition for injunction restraining the legal representative of Pandaria Pillai. One of the four girls of Pandaria Pillai, died and other three girls could not even enter Kumbakonam due to the harassment of the male descendants. The defendants 1 and 2 are creating fraudulent document against the interest of the female sharers. The third respondent has 1/5th share in the properties. All the earlier and subsequent purchasers are to be impleaded in the suit.

12.A perusal of the records reveals that the suit properties belonged to one Pandaria Pillai, who was doing business in manufacturing oil soap in the name and style of Power Light Soap. His wife is Pappathiammal. The averment of the plaintiff is that he married Rajammal as the second wife. The averment of the defendants 1 to 3 is that the said Rajammal was not the second wife, but, only a concubine of the said Pandaria Pillai. It is stated that Pandaria Pillai, executed a settlement deed in favour of Rajammal mentioning her as his concubine. There is a release deed executed by Rajammal, wherein, she has admitted that she is only a concubine of Pandaria Pillai. On the side of the defendants 1 to 3, it is further stated that Rajammal has executed a release deed, wherein, she has admitted not to claim any property for herself or for her children and that she has received certain properties from Pandaria Pillai,, through a settlement deed.

13.The claim of the appellant / plaintiff is that as the children of Pandaria Pillai, the plaintiff and the defendants 7 to 13 and one Mallika are the sons and daughters of Pandaria Pillai, through Rajammal. The averment of the second defendant is that Rajammal lived as a concubine of Pandaria Pillai, only for a period of six years and there is no possibility of having 10 children within that period. Whether the release deed executed by Rajammal is binding, the plaintiff and the defendants 7 to 13 the legal representatives of Mallika can be decided only after the completion of the trial.

14.The contention of the third defendant is that depriving the legal representatives of Pandaria Pillai,, the defendants



1 and 2 are alienating the properties. The first defendant has admitted that he and the second defendant partitioned the properties and has alienated a major portion of his share. When there are other children born through Pappathiammal, the validity of the partition between the defendants 1 and 2 is to be proved in the trial.

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15. The suit is filed for partition, everybody, who are claiming a right has a duty to prove their eligibility for a share. From the admission made out by the counter filed by the first respondent and from the encumbrance certificate, it is clear that the first respondent is alienating certain properties that belonged to Pandaria Pillai.

16. The third respondent is the daughter of Pandaria Pillai, through Pappathiammal and the third respondent is claiming 1/5th share in the property. Since the third respondent is also claiming right over the property and questioning the sale executed by the first and second respondent, an order preventing the first and second respondents from alienating the properties till the disposal of the case is necessary. For the above reasons, it is decided that the order of the trial Court is to be set aside. Hence, an order of injunction not to alienate or encumber the suit properties against the defendants 1 to 6, till the disposal of the suit is granted. The trial Court is directed to disposed of the original suit within a period of six months from the date of receipt of a copy of this order.

17. In the result, this Civil Miscellaneous Appeal is allowed and order, dated 11.03.2013, in I.A.No.48 of 2012, in O.S.No.24 of 2011, on the file of the 1st Additional Sessions Judge (Protection of Civil Rights), Thanjavur, is hereby set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Ls

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The 1st Additional Sessions Judge (Protection of Civil Rights),
Thanjavur.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.AL.GANTHIMATHI, Advocate (SR-35811[F] dated 25/11/2021
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C.M.A(MD)No.1350 of 2013
25.11.2021

_RD(11.01.2022) 7P 5C