



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) No.1453 of 2021

and

C.M.P. (MD) No.8120 of 2021

WEB COPY

S.Chandrasekaran .. Petitioner/Petitioner/7th defendant
-vs-

1.M.K.R.Rajarajan

2.A.Subbaiah

3.Pushbam @ Rani

4.S.Kavitha

5.S.Banu .. Respondents/Respondents/Plaintiff/Defendant

Prayer :- Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 16.08.2021 passed in I.A.No.3 of 2021 in O.S.No.49 of 2014 on the file of the learned Principal District Judge, Theni.

For Petitioner : Mr.Pon Senthil Kumaran

ORDER

The revision petitioner/7th defendant is before this Court challenging the fair and decretal order dated 16.08.2021 made in I.A.No.3 of 2021 in O.S.No.49 of 2014 passed by the learned Principal District Judge, Theni, which is filed for a direction to the first respondent/plaintiff and respondents 2 to 5/defendants 1, 2, 8 and 9 to produce the original Vardhamana Agreement dated 30.03.2000, which claims to be in possession of the respondents herein.

2.For the sake of convenience, the parties herein are referred to as per their rank in the suit in O.S.No.49 of 2014.

3.The facts in brief, which are necessary for the disposal of the Civil Revision Petition, are set out herein below. The plaintiff had originally filed the suit for a partition and separate possession of his 1/7 share in the suit scheduled property and for a permanent injunction restraining the defendants from encumbering the suit property. Thereafter, on 27.11.2017, the plaint was amended to include the prayer for a declaration that the Deed of Partition dated 30.03.2000 vide Document No.1905 of 2000 entered between defendants 1 to 9 is null and void.



4.The plaintiff is the grandson of the 1st defendant born to the elder daughter through his first wife, Late.S.Logarani. The said S.Logarani died in the year 1969. After the demise of the said S.Logarani, the 1st defendant married the 2nd defendant. Defendants 3 to 6 are the wife and daughters of one Late.S.Sekar, who is the elder son of the 1st defendant born through his first wife S.Logarani. The 7th defendant is the son of the 1st defendant born to his first wife and defendants 8 and 9 are the daughters born to the second wife of the 1st defendant.

5.According to the plaintiff, the suit properties are Hindu Undivided Joint Family properties of himself and the defendants. As they were unable to continue to be in joint possession, the plaintiff has requested for a partition, which was acceded to. The plaintiff would further submit that after the demise of his mother and while he was a minor, the 1st defendant, along with the other defendants, excluding the plaintiff and his mother, had entered into a registered Deed of Partition on 30.03.2000. Therefore, the said partition would not bind his 1/7 share. Since the other defendants were not coming forward with the partition, the suit in O.S.No.49 of 2014 came to be instituted by the plaintiff on the file of the Principal District Judge, Theni.

6.Defendants 3, 4, 5, 6 and 7 had filed their written statement contending that the partition dated 30.03.2000 is binding upon the plaintiff and that parties have been in enjoyment of their respective shares. Since the petitioner's mother had been allotted an equivalent share of property elsewhere, they are not parties to this partition. They would further contend that each of the shareholder is enjoying their respective shares keeping in mind the terms of the partition. They would further contend that apart from the properties covered under the registered Partition Deed dated 30.03.2000, parties have also entered into a Vardhamana Agreement on the same day in respect of those properties, which were not covered under the registered Partition Deed and therefore, pleaded that the suit be dismissed.

7.After framing of issues, the revision petitioner herein, who is the 7th defendant in the suit, has come forward with an application in I.A.No.3 of 2021, which is the petition that is impugned in the instant revision, for a direction to defendants 1, 2, 8 and 9 to produce the Vardhamana Agreement dated 30.03.2000.

8.The 7th defendant would contend that this document is in the possession of the plaintiff and defendants 1, 2, 8 and 9 and the same is very vital to establish his case. The plaintiff had filed a counter *inter alia* denying the very Vardhamana Agreement and stating that he is not in possession of such a non-existent document. Therefore, the learned Principal District Judge, Theni by her order dated 16.08.2021, was pleased to dismiss the application taking note



of the counter filed by the plaintiff that there was no such Vardhamana Agreement and consequently, no Vardhamana Agreement as pleaded by the 7th defendant is available with the plaintiff.

9. Challenging the said order, the revision petitioner/7th defendant is before this Court.

10. Mr. S. Pon Senthil Kumar, learned counsel, who had entered appearance on behalf of the petitioner/7th defendant, would contend that defendants 1, 2, 8 and 9 have not filed any counter to the 7th defendant's application, which will go to show that the plaintiff and these defendants colluded together to keep away the document. He would, therefore, submit that the learned Principal District Judge, Theni has erred in not allowing the application and directing the plaintiff and defendants 1, 2, 8 and 9 to produce the said document. This is the sum and substance of the argument of the learned counsel for the petitioner.

11. The plaintiff had pleaded that defendants 1 to 9 had entered into a registered partition on 30.03.2000 ignoring the plaintiff and his mother, who had a right to the property. The defence raised by the revision petitioner and defendants 3, 4, 5 and 6 was that there is also a Vardhamana Agreement in respect of those properties that were not covered under the registered Partition Deed dated 30.03.2000 on the very same day. It is this document that the 7th defendant seeks production by the impugned application. In his counter in I.A.No.3 of 2021, the plaintiff has categorically denied such an agreement and in such circumstances, it is rather incongruous for the 7th defendant to insist upon the Court directing the plaintiff and defendants 1, 2, 8 and 9 to produce a non-existent document.

12. The argument of the learned counsel for the revision petitioner that since the other defendants have not filed their counter, it has to be presumed that they are in possession of the Vardhamana Agreement is rather strange. Thus, this Court is of the considered view that the learned Principal District Judge, Theni has rightly dismissed the application and I do not find any reason to re-consider the same. Consequently, the Civil Revision Petition stands dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



The Principal District Judge, Theni.

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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.

+1CC to Mr.Pon Senthil Kumaran, Advocate, SR.No.34196 dated 11.11.2021

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KB(30.11.2021) 4P 3C