



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2022

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The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.PD.No.1029 of 2017

and

C.M.P.No.4969 of 2017

C.Rajendran

... Petitioner

Vs.

C.Varadharajalu (died)

- 1.C.Ramu
- 2.V.Baggiyam
- 3.V.Prabhakaran
- 4.V.Ravichandran
- 5.V.Janarthanan
- 6.Ruckmani

V.Chinnasamy (died)

- 7.V.Raju
- 8.Parvatham
- 9.Vijayalakshmi
- 10.P.Ranganayaki

Amsaveni (died)

- 11.Dhanalakshmi
- 12.Vasanthamani
- 13.Santhamani
- 14.Kasumani
- 15.D.Mahendran

...Respondents



Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Fair and Decreetal orders dated 04.02.2017 in I.A.No.1314 of 2016 in O.S.No.563 of 2009 on the file of the Principal Subordinate Court, Coimbatore.

For Petitioner	..	Ms.A.Kundavai
For R1 to R6	..	Mr.B.Vijayakumar
For R7 to R9	..	Mr.Murali Mohan
For R10 to R12	..	Ms.P.Veena Suresh

ORDER

This Civil Revision Petition has been filed questioning an order in I.A.No.1314 of 2016 in O.S.No.563 of 2009 which suit is now pending on the file of the Principal Sub Court, Coimbatore. The said suit in O.S.No.563 of 2009 had been filed by the plaintiffs for a declaration that A schedule property belongs to the 1st plaintiff absolutely and for declaration that the B schedule property belong to the 2nd plaintiff absolutely and seeking permanent injunction or in the alternate to pass preliminary decree of partition with respect to C, D, E and F schedule properties into eight equal shares and also pass final decree accordingly.



2.The 2nd defendant claims right of title over the properties, in view of a Will executed. That statement was made in the written statement filed by the 2nd defendant.

3.Thereafter, the plaintiffs filed I.A.No.1314 of 2016 under Order 18 Rule 1 and Section 151 of CPC., stating that the 2nd defendant should lead evidence to prove the Will.

4.That Interlocutory Application had come up for consideration on 04.02.2017 before the Principal Sub Judge, Coimbatore and the learned Principal Sub Judge, on considering the facts of the case allowed the said application. That necessitated the filing of the present Civil Revision Petition by the 2nd defendant in the suit.

5.Heard the learned counsels.

6.The burden lies on the plaintiffs to establish that they are entitled for declaratory relief of title with respect to A and B schedule properties. The A schedule properties as stated in the plaint consists of two items and Item I is land measuring 1.95 ½ acres out of a larger area of 3.91 acres in



G.S.No.794/3 and a house bearing D.No.243 in Nathan S.No.665. The

Item 2 is land situated at Gudalur Village, Coimbatore North Taluk and the house in Samichettipalayam, and again in Coimbatore North Taluk. The B schedule property also consists of items 1 and 2. Item 1 is again 1.95 ½ acres out of a larger area of 3.91 acres in F.S.No.794/3 in Gudalur Village in Coimbatore North Taluk and the Item 2 is house bearing door No.242 in Samichettipalayam in Natham S.No.665. There are other properties in C schedule which includes another house bearing door No.243 and D schedule property which is the entire area of 3.90 acres in S.F.No.794/3. E schedule property is 1.24 acres in S.F.No.793/1 and F schedule property is a dilapidated house in Samichettipalayam in Gudalur Village for which the door number has not been given.

7.To a little extent A and B schedule properties might overlap, but the boundaries are different. Therefore, the burden is always on the plaintiffs, when they file a suit for declaratory right to produce necessary oral and documentary evidence to prove that they are entitled for such reliefs. The defendants can put up various defense and in this case, the 2nd defendant appears to have put up a defense that he is the beneficiary under a Will. If evidence is adduced relating to declaration and partition,



then the onus shifts to the 2nd defendant to show that the executant of the Will had title, and then the Will has to be propounded in manner known to law.

8.The burden on the plaintiffs can never shift. It is stagnant and has to be discharged. Only when there is an admission by the defendants of certain facts, the burden shift from the plaintiff to lead evidence in the first instance. When the defendants deny the claim of the plaintiffs to seek declaratory right or even to seek partition, then the burden remains with the plaintiffs to establish that particular fact. The onus later shifts to the defendants. The order under revision certainly required to be interfered with.

9.Learned counsel for the revision petitioner placed reliance on the judgment of the Hon'ble Supreme Court reported in **(2020) 6 SCC 387, *Bhagwat Sharan v. Purushottam and others***. That was also with respect to establishment of a Hindu United Family nucleus or not. The Hon'ble Supreme Court had very categorically stated that the burden to establish that there was nucleus forming a Hindu United Family rests with the party who asserts that particular fact. The Hon'ble Supreme Court had



stated that Sections 101 to 103 of the Indian Evidence Act, 1872 is clear that any fact known to the plaintiff should be established only by the plaintiff. The ratio laid down in that particular judgment is directly applicable to the facts of this case.

10.I would therefore interfere with the order dated 04.02.2017 in I.A.No.1314 of 2016 in O.S.No.563 of 2009 of the learned Principal Sub Judge, Coimbatore and set aside the same.

11.The Civil Revision Petition stands allowed. No order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

12.The plaintiffs in the suit in O.S.No.563 of 2009 must begin evidence. They must first assert whether there is a joint family nucleus, whether they are entitled for declaration and in the alternate whether they are entitled for partition. Thereafter, the onus shifts to the 2nd defendant who may produce a Will as a document to rebut the case of the plaintiffs, but the initial burden as stated by the Hon'ble Supreme rests only with the plaintiffs.

13.A direction is given to the learned Principal Subordinate Judge,



Coimbatore to commence the trial in O.S.No.563 of 2009 and proceed further with the trial and if there are no hindrances is placed by way of filing Interlocutory Applications by anyone of the parties, then he may endeavour to dispose of the suit on or before 30.11.2022.

04.04.2022

Internet:Yes/No
Index:Yes/No
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To,
The Principal Subordinate Court, Coimbatore.



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C.V.KARTHIKEYAN,J.

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