



CRP No. 1784 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.07.2022

Delivered On : 27.01.2023

CORAM :

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Civil Revision Petition No.1784 of 2021

and

C.M.P.No.13840 of 2021

1. V.Muthulakshmi
2. V.Anbazhagan
3. V.Ilango

.. Petitioners

Versus

1. Venkatachalam
2. Saroja
3. Kayalvizhi
4. Adimoolam
5. Gunasekaran
6. A.Manvizhi
7. K.Thenmozhi

.. Respondents

Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the Order and decree dated 05.06.2021 made in I.A.No.292 of 2020 in O.S.No.79 of 2012 on the file of learned III Additional District Judge, Puducherry.

For Petitioners : Mr. D.Ravichander

For Respondents : Mr. I. Abrar Md. Abdullah



CRP No. 1784 of 2021

This Civil Revision Petition has been filed against the Order and decree dated 05.06.2021 made in I.A.No.292 of 2020 in O.S.No.79 of 2012 on the file of learned III Additional District Judge, Puducherry.

2. For the sake of convenience, the parties shall be referred to as "Plaintiffs" and "Defendants" as has been arrayed in the suit.

3. The Revision Petitioners are the Plaintiffs before the Trial Court. They have filed the suit in O.S. No. 79 of 2012 on the file of the learned III Additional District Judge, Puducherry for the following reliefs:-

“a) Declaration that the Plaintiffs 2 and 3 are the only forced heirs of the first Defendant;

b) Declaration that the gratuitous dispositions made by the first Defendant are not binding on them and the first Defendant has no absolute right of transferring the properties in favour of others and such transfers if at all could be valid, can be valid only to the extent of 1/8th share as far as gratuitous dispositions are concerned;

c) Declaration that the first Plaintiff is entitled to ½ equal share of interest in the properties described in the “B” & “C” schedule of the Plaint;

d) Decree of Permanent Injunction restraining the Defendants 1 to



5 their men and agents or any one claiming under them not to encumber the suit properties in any manner either by way of alienation, mortgage, lease or in any manner whatsoever without the consent of the Plaintiffs;

e) Direct the Defendants to pay the cost of the Suit;

f) and to pass such other relief as this Hon'ble Court may deem it and necessary in the circumstances of the case.”

4. As per the plaint averments, the first Defendant is the husband of the first Plaintiff. The Plaintiffs 2 and 3 are the children born out of the wedlock between the first Plaintiff and first Defendant. The 6th and 7th Defendants are daughters born out of the wedlock between the first Plaintiff and first Defendant. According to the Plaintiffs, A Schedule Property described in the plaint belongs to the mother-in-law of the first Defendant. The B and C Schedule Properties were purchased out of the income derived out of A Schedule property by the first Defendant. The Plaintiffs and Defendants are natives of Pondicherry and are governed by the Coromandal Customary Hindu Law applicable to Hindus in Pondicherry. As per the Coromandal Law, the Plaintiffs 2 and 3, being the sons are the only lawful heirs. In other words, they are the *forced heirs* of the first Defendant and the first Plaintiff, having the right of *legitim*. However, the Defendants 3 to 5 claims to be the children born out of the illicit relationship between the first and second Defendant. The



CRP No. 1784 of 2021

Defendants 3 to 5 were never recognised or acknowledged by the first

Defendant at any point of time. As per Coromandal Coast of Pondicherry and applicable laws, a Hindu father or Hindu mother who has an apparent heir cannot make any alienation of his or her properties unless there is absolute legal necessity for the same. If alienated without any legal necessity, it amounts to wasteful alienation and it is also prohibited under the Customary Hindu Law and the apparent heir can question the same. The Plaintiffs 2 and 3 being the apparent heirs are entitled to a share by equal moiety in metes and bounds. As per the customary Coromandal Law, the son has the right to protect his interest in the properties from being alienated. The first Defendant, as father, has no right of alienation without the consent of the Plaintiffs and first Defendant is barred from even making gratuitous dispositions to the deprivation of the Plaintiffs. The first Defendant, irrespective of the nature of properties in his possession, cannot transfer more than 1/8 of the total estate. He cannot also donate more than 1/8 of his share. The A Schedule property is not the self-acquired property of the first Defendant, but he is holding it for and on behalf of his forced heirs, being the 2nd and 3rd Plaintiffs. As the Defendants 2 to 5 made a rival claim, the filing of the suit has become necessary and accordingly, the suit was filed.

5. In the suit, the first Defendant filed a written statement denying the



CRP No. 1784 of 2021

entire plaint averments *inter alia* stating that he married the second Defendant on 10.09.1964 and she is his legally wedded wife through whom the Defendants 3 to 5 have born. The first Plaintiff was married to one Balakrishnan and she deserted him and lead an immoral life. It is further stated that the first Plaintiff had an illegal intimacy with the first Defendant after his legal marriage with the second Defendant and taking advantage of the same, she had fraudulently created birth certificates for her children and gave name similar to his name as father of her children. It is further stated that the brother of the first Defendant by name Azhaganandam had illegal intimacy with the first Plaintiff and taking advantage of the same, she threatened Azhaganandam by saying that if he gets marriage, she will expose the illegal relationship with her to everybody. Apprehending that his illicit relationship with the first Plaintiff will be exposed, Azhaganandam had committed suicide. The first Plaintiff and the Plaintiffs 2 and 3 have convened a Panchayat and the first Defendant paid Rs.50,000/- to the first Plaintiff besides executing a release deed on 11.01.1992 in favour of the Plaintiffs 6 and 7, daughters of first Plaintiff with an assurance with they will not disturb the first Plaintiff any further. Similarly, some other deeds were executed by the first Defendant to purchase peace. Notwithstanding the same, the sixth Defendant has filed a suit for partition before the Additional Subordinate Judge, Pondicherry which was



dismissed on 15.10.1998 by holding that the first Plaintiff is not the wife of the first Defendant and the Plaintiffs 2, 3, 6 and 7 are not the children born to the first Defendant. An appeal was filed before this Court against the judgment dated 15.10.1998 and it was also dismissed on 04.11.2009. Therefore, the present suit is hit by the principles of *res judicata* and prayed for dismissal of the present suit.

6. Pending suit, the Plaintiffs have filed I.A. No.292 of 2020 seeking withdrawal of the Suit with the liberty to file fresh Suit on the same cause of action. That application was dismissed by the Trial Court on 05.06.2021 against which the present Civil Revision Petition is filed.

7. The Learned Counsel for the Revision Petitioners submitted that the trial court, without considering the scope of Order XXIII Rule 1 of the Code of Civil Procedure dismissed the application seeking withdrawal of the suit in O.S. No. 79 of 2012 with liberty to file a fresh suit on the same cause of action. Such a relief sought for by the Plaintiffs is legally permissible. However, the court below has stated that the Plaintiffs have pleaded all the required facts in the present plaint and there is no lacuna or omission of the required facts warranting withdrawal of the present suit. Further, by stating



CRP No. 1784 of 2021

that the suit is pending from 2012, the trial court refused to accord permission to the Plaintiffs to withdraw the suit.

8. It is the submission of the learned Counsel for the Petitioners/ Plaintiffs that the plaint was filed on the strength of applicability of Customary Coromandel Hindu law to the parties. However, as there is change in law on the said aspect, the Plaintiffs were constrained to withdraw the suit with liberty to file a fresh suit. There were conflicting views with respect to applicability of personal laws, particularly with respect to extension of Hindu Succession Act to Union Territory of Pondicherry. Thus, there is a formal defect in instituting the plaint and it warrants withdrawal of the suit with liberty to file a fresh suit. The Plaintiffs were constrained to withdraw the suit due to change in law which constitutes formal defect in relation to applicability of customary Coromandal Hindu Law to them and therefore, the Court below ought to have permitted the Plaintiffs to withdraw the present suit.

9. The learned Counsel for the Petitioners referred to the order passed by this Court in C.R.P (PD).No. 3890 of 2019 dated 18.12.2019 and submitted that only on the basis of the said order, the application was filed for withdrawal of the Suit. The learned Counsel for the Petitioners submitted that



the change in law is sufficient ground to consider withdrawal of the Suit, which was not considered by the trial court and prayed for allowing the Civil Revision Petition.

10. Per contra, it is submitted by the learned counsel for the respondents-Defendants that the instant application has been filed to protract the suit proceedings. The suit was filed in the year 2012 and after 8 years, the present application in I.A. No. 292 of 2020 was filed. The learned Counsel invited the attention of this Court to Paragraph Nos.12 to 15 of the Order of the learned III Additional District Judge, Pondicherry in I.A.No.292/2020 in O.S.No.79/2012, dated 05.06.2021 which read thus:

“12. On going through the Order XXIII Rule 1 CPC, a Suit can be permitted to withdrawn, with liberty to file fresh Suit, when there is a formal defect in the Suit (or) Court considers that there are sufficient grounds for its withdrawal.

13. As far as formal defects in concerned, it was argued by the Counsel for the Petitioners/Plaintiffs that the law interpreted by the Hon'ble High Court in 2018 (1) CTC 481 goes against their stand in the Suit, as such Petitioners may be allowed to withdraw the Suit, because the interpretation given by Hon'ble High Court of Madras, goes against the case of Petitioner, it cannot be termed as formal defect and allow the Petitioner to withdraw the Suit.



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sufficient cause permitting the Petitioner/Plaintiff to withdraw Suit is concerned, the learned Counsel for the Petitioner/Plaintiff relied upon AIR 2017 SC 685 in the case of V.Rajendiran and another Vs. Annasamy Pandian wherein when the Hon'ble Supreme Court of India, allowed the Petition for withdrawal of Suit, when, there is change in Survey number, but in this case, there is shift in the stand law interpreted by the Hon'ble High Court, as such, the said citation will not be applicable to the case on hand.

15. In this case, both the sides has adduced evidence and case was posted for arguments. At that juncture, the present Petition was filed. As far as pleadings are concerned, the parties to the Suit has to plead only facts and facts alone. In this case, the Petitioner seeking permission to withdraw the Suit with the liberty to file fresh Suit, as there is shift in the law as interpreted by the Hon'ble High Court. If the said application, is allowed, then the parties has to relitigate the case for another decade and further there is no formal defect in the Suit and there is no sufficient grounds warranting permission to be accorded by this Court, to withdraw the Suit. There is no merit in the Petition, accordingly this Petition is dismissed.”

11. The learned Counsel for the Respondent also invited the attention of this Court to **Order 23 Rule 1 CPC**, which reads thus:

“1. Withdrawal of Suit or abandonment of part of claim – (1) At any time after the institution of a suit, the Plaintiff may as against all or any of the Defendants abandon his suit or abandon a part of his claim:

provided that where the Plaintiff is a minor or other person to



whom the provisions contained in Rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.”

12. By pointing out the above, it is stated that the learned counsel for the respondents that the Plaintiffs did not satisfy the ingredients of Order 23 of CPC and they have approached the trial court only to drag on the proceedings. Their intention is not *bona fide* and therefore, the trial court has rightly dismissed their application seeking withdrawal of the suit and it does not call for any interference by this Court.

13. On consideration of the rival submissions and in the light of the reported ruling relied on by the learned Counsel for the Respondent, at the outset, this Court wish to observe that in this Revision, the correctness or otherwise of the pleadings of the parties in the suit or written statement has not been gone into. This Court is oblivious of the fact that the present Civil Revision Petition emanates out of an order of the court below refusing permission to the Plaintiffs to withdraw the suit and to institute a fresh suit with the same cause of action. Therefore, whether the order passed by the trial court, refusing permission to the Plaintiffs is correct or not alone is gone into by this Court in this Revision petition.



14. The Plaintiffs filed the instant application in I.A. No. 292 of 2020 seeking withdrawal of the Suit with liberty to file fresh Suit on the same cause of action. According to the Plaintiffs, in Para No.3 of the affidavit in I.A. No. 292 of 2020, it was stated thus:

“3. I further submit that in the course of trial the respondents moved an application in I.A. No. 241 of 2017 to refer Ex.B2 to a finger print expert to compare the finger prints available on the reverse of Ex.B2, release deed with the finger print that may be

4. I further submit that apart of our submissions hereinabove, actually we laid the suit in terms of the Law that was prevailing in the year 2012. We were advised that the customary Coromandel Hindu Law of Pondicherry is alone applied to natives of Pondicherry. In the year 2012, the Law that was applied by the Courts of Law in Pondicherry would be that all the Natives of Pondicherry would come under the definition of "Renoncants". This Honourable Court may further appreciate that by virtue of introduction to Section 2 (A) of The Hindu Succession Act, the provisions of Hindu Succession Act shall not be applicable to renoncants of Union Territory of Pondicherry. Therefore, the law that was understood would be that all such natives who shall also be the Renoncants, shall be governed by the Old Coromandel Customary Hindu Law of Pondicherry. We are also advised that this was the interpretation that prevailed in vogue as among the legal practitioners and luminaries in Pondicherry. In fact, we are further advised that on a reference to the judgment of his Lordship Honourable Mr. Justice R.S. Ramanathan reported in 2012 2 Law



CRP No. 1784 of 2021

Weekly 373 and the Judgment....."

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15. Thus, it is evident that the instant application has been filed on the basis of two important factors. The first is that the respondents herein have filed I.A. No. 241 of 2017 to refer Ex.B2 to a finger print expert and it was allowed by the trial court on 01.10.2018. As against the same, the Revision Petitioners earlier filed CRP (PD) No. 3890 of 2019 before this Court. While dismissing the Civil Revision Petition, this Court has given liberty to raise all contentions including legality, validity and enforceability of Ex.B2 in the suit. However, on the basis of such liberty given by this Court, the Plaintiffs have filed the instant application to withdraw the suit. The observations made by this Court in CRP (PD) No. 3890 of 2019 is in relation to I.A. No. 241 of 2017 filed by the respondents herein. In other words, this Court has not given liberty to withdraw the suit but to raise all the contentions made in CRP (PD) No. 3890 of 2019 before the trial court in the pending suit. Such an observation made by this Court has been misconstrued by the Plaintiffs and sought for withdrawal of the suit itself.

16. Further, the averments in para No. 3 of the affidavit in I.A. No. 292 of 2020 mentioned above would indicate that trial in the suit commenced, documents have been marked and witnesses examined. Therefore also, the



CRP No. 1784 of 2021

claim of the Plaintiffs for withdrawal of the suit with liberty to file a fresh suit cannot be granted.

17. The Plaintiffs have filed the suit in the year 2012. It is needless to mention that the law that prevailed as on the date of institution of the suit will bind the Plaintiffs as well as the Defendants. In any event, this Court is not making any observation as regards the applicability of the law or the one which govern the Plaintiffs and Defendants. The Plaintiffs have not made out any case for withdrawal of the suit. The claim of the Plaintiffs that formal defects in the suit is required to be rectified and therefore the suit has to be withdrawn cannot be considered at this stage. As pointed out by the trial court, the suit was filed in the year 2012, issues have been framed, trial commenced and witnesses examined through whom documents have been marked. While so, at this stage, the Plaintiffs cannot be permitted to withdraw the suit. It is to be noted that both sides had adduced evidence during the trial and when trial proceeded upto the arguments stage, the Plaintiffs have come forward with the instant application in I.A. No. 292 of 2020 in O.S. No. 79 of 2012 to withdraw the Suit with liberty to file fresh Suit on the same cause of action with the pleadings. If there are defects in the pleadings, the Plaintiffs can seek for amendment. On the other hand, the Plaintiffs, by pointing out the



CRP No. 1784 of 2021

amendments made to Section 2 (A) of The Hindu Succession Act, seek for withdrawal of the suit. The amendment of the Act cannot be a ground for the Plaintiffs to seek for withdrawal of the Suit and to institute a fresh suit with the same cause of action. Under those circumstances, the learned trial Judge/III Additional Judge, Pondicherry had rightly dismissed the Petition seeking liberty to file a fresh Suit on the same cause of action.

18. In the light of the above discussion, **this Petition is dismissed** as having no merits. The Order and decree passed by the learned III Additional District Judge, Puducherry in I.A.No.292 of 2020 in O.S.No.79 of 2012 dated 05.06.2021 is confirmed. Consequently, connected Miscellaneous Petition is closed. No costs.

27.01.2023

tri/dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



CRP No. 1784 of 2021

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- To
1. The III Additional District Judge,
Puducherry.
 2. Section Officer,
V.R.Section,
High Court, Madras.



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CRP No. 1784 of 2021

SATHI KUMAR SUKUMARA KURUP, J.

dh

Order made in
CRP.No.1784 of 2021

27.01.2023