



CRP (MD) No.367 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	01.08.2023
Pronounced on	08.08.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.367 of 2023

and

CMP(MD)No.1801 of 2023

Lakshmanan

... Petitioner

Vs.

1.Vangalammal

2.Baskaran

3.Mani

4.Muthuraj

5.Suresh

6.Parishabegam

7.Byrojabegam

8.Syed Abudhahir

9.Mohammed Ansari Ali

10.Selvi

11.Kalavathi

... Respondents



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PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to call for the records pertaining to the order dated 17.11.2022 in O.S.No.29 of 2016, on the file of the learned Principal District Judge, Karur, rejecting the memo filed by the petitioner and set aside the same.

For Petitioners : Mr.P.Samuel Gunasingh
For R6 to R9 : Mr.V.George Raja
for M/s.Ajmal Associates
For R1 to R5 : No appearance

ORDER

This civil revision petition is preferred against the order dated 17.11.2022 in O.S.No.29 of 2016, on the file of the learned Principal District Judge, Karur.

2. The facts in brief are as follows:-

The revision petitioner is the third defendant in O.S.No.29 of 2016 on the file of the learned Principal District Judge, Karur. The above suit was filed by the respondents 1 to 3/plaintiffs for partition claiming 3/2 shares in

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the suit properties. At the time of trial of the suit, the defendants 1 to 3 filed a memo stating that the case of plaintiffs is supported by the defendants 5 to 8 and therefore, defendants 5 to 8 have to let in evidence first. The trial Court rejected the said memo and directed the defendants 1 to 3 to lead evidence first. Aggrieved by this, the revision petitioner/third respondent has preferred the present revision petition.

3. The learned counsel appearing for the revision petitioner would submit that the trial Court failed to note the fact that in such cases among defendants, the order of leading evidence should be as follows:-

- (i) Those defendants who fully support the case of plaintiff.
- (ii) Those defendants who do not support the case of the plaintiff in any part.

Thereby, the learned counsel would contend that for the administration of fair and just trial, it must be noted that the plaintiff's evidence, if cross-examined by the adverse party, may reveal certain lacuna which could be got corrected by the defendants supporting the plaintiffs. He would further contend that as per Section 137 of the Evidence Act, the defendants, who are supporting the



plaintiffs case, are not an adverse party. Therefore, their formal cross-examination should be brought on records and it is only then the contesting defendants should be directed to cross examine the plaintiff. The trial Court ought to have allowed the memo filed by the petitioner in the interest of justice.

4. On the other hand, the learned counsel appearing for the respondents 6 to 9 would submit that the defendants 5 to 8 do not support the case of the plaintiffs wholly and therefore, the trial Court has rightly rejected the memo filed by the defendants 1 to 3.

5. Heard the learned counsel for the parties and perused the records.

6. A very small controversy is raised in this petition as to which defendant should be allowed to let in evidence first. There is no doubt so far as the trial are such proceedings are concerned, the trial Judge is the master of his own proceedings. It is his domain, where he can fix an adjust the scope and mode of evidence. Normally there is no question of interference in such



matters, as the discretion, in the facts and circumstances of the case, need to be exercised by the concerned trial Court.

7. Rule 2 of Order 18, Civil Procedure Code runs as under :

"2.(1) On the day fixed for hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence [if any] and may then address the court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

(4) Notwithstanding anything contained in this rule, the Court may, for reasons to be recorded, direct or permit any party to examine any witness at any stage."

8. Examination-in-chief of a witness, cross-examination by the adverse party and re-examination by the party who called the witness are defined in Section 137 of the Evidence Act. Under Section 138 of the Evidence Act, witnesses shall be first examined in chief, then [if the adverse party so



desires] cross-examined, then [if the party calling him so desires] re-examined. It is in the light of these provisions of the Evidence Act and Order 18 of Civil Procedure Code, it appears that the trial Court has to bear in mind which is the party who has a right to begin and which is the adverse party who has a right to cross-examine.

9. So far as the defendants are concerned, the question which of the defendants should begin has not been dealt with in Order 18 CPC. But on general principle, if any of the defendants supports the plaintiff in whole or in part, then he should address the Court and lead his evidence first before the other defendants, who do not support wholly or in part the plaintiff's case. The order in which the defendants lead evidence becomes important only when some of them support the case of the plaintiff in whole or in part while the others do not. If all the defendants completely oppose the plaintiff's case, then the question of leading evidence amongst the defendants is immaterial. It is only when the defendants are divided into two groups, one group consisting of the defendants supporting the plaintiff's case in any part, that the question of order of leading evidence becomes important. In such cases



among defendants the order of leading evidence should be as follows:-

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1. Those defendants who fully support the case of the plaintiff;
2. Those defendants who partly support the case of the plaintiff;
3. Those defendants who do not support the case of the plaintiff in any part."

10. In the circumstances of the present case, it is apparent that the plaintiffs' case is not fully supported by defendants 5 to 8. The specific plea of the plaintiffs in the above suit is that, the suit property originally belonged to one Muthusamy Gounder. In 1953, the said Muthusamy gounder died leaving behind his wife Chellammal, sons Ramasamy Gounder and Velusamy Gounder and his daughter Nallammal as is legal heirs. Thereafter, in the year 1960, the properties of the Muthusamy Gounder was divided into three shares among the wife and two sons of Muthsamy Gounder. Since the said Muthusamy Gounder died in the year 1953, the daughter Nallammal had no share in the property of Muthusamy Gounder. The further contention of the plaintiffs is that the said Ramasamy Gounder died in the year 1984 leaving behind his wife Muthuraj and son Suresh as his legal heirs. The said Velusamy Gounder also died in the year 1996 leaving behind the first plaintiff Vangalammal, the second plaintiff Baskaran and the third plaintiff



Mani and another daughter Sowntharam as his legal heirs. Since the said Sowntharam died unmarried, she was not made as party in the suit.

While so, the said Ramasamy Gounder during his life time concealing the factum of partition took place between his brother and his mother, mortgaged half share of the properties to one Khaleel Rahman. Since the mortgage was not discharged, the mortgaged property was brought for auction. The said auction sale was objected by Velusamy Gounder and Chellammal. Thereafter, the said Chellammal and Velusamy Gounder, in the year 1967 mortgaged their respective shares to one Jaffer Ali and obtained loan. Since Ramasamy Gounder failed to maintain his mother Chellammal, she was taken care by her another son, namely, Velusamy Gounder. Hence, the said Chellammal had orally given her share in favour of Velusamy Gounder. The said Chellammal died 36 years ago. A joint patta was issued in the name of Ramasamy Gounder and Velusamy Gounder in respect of suit properties. The legal heirs of Ramasamy Gounder were in possession and enjoyment of their 1/3 shares in the suit property and they were living in different places due their profession. Therefore, the legal heirs of Ramasamy Gounder were in possession and enjoyment of 1/3rd share in the suit properties and the legal



heirs of Velusamy Gounder were in possession and enjoyment of their 2/3rd shares in the suit properties for the past 45 years. While so, on 23.02.2016, the legal heirs of Ramasamy Gounder i.e., the defendants 1 to 3 threatened the plaintiffs to sell their shares to them and also obliterated the channels in the suit properties and also damaged the pipe lines running through the suit properties. Hence, the plaintiffs filed the above suit for partition in respect of their 2/3rd share in the suit properties.

11. The third defendant in their written statement denied the fact that the properties were divided into three shares and the said Challammal orally gave her 1/3rd share in favour of Velusamy Gounder. According to them, they are entitled to half share in the suit properties.

12. The seventh defendant would claim that the said Ramasamy Gounder borrowed a loan for a sum of Rs.3,000/- from one Abdul Hameed by executing a promissory note which was assigned in favour of one Khaleel Rahman, the father of the defendants 5 to 8. Since the said loan was not discharged by Ramasamy Gounder, the said Khaleel Rahman, filed a suit in



O.S.No.1080 of 1969 and a decree was passed in his favour. Thereafter, the said Khaleel Rahman filed E.P.No.21/72 and E.P.No.110 of 1974 for execution of the decree, in which the said Khaleel Rahman himself took the suit properties in the Court auction taken place on 20.07.1983. The sale was confirmed by the Court on 19.09.1983 and on 09.01.1985, the said Khaleel Rahman took possession of the suit properties. Thereafter, Khaleel Rahman till his death was in possession and enjoyment of the suit properties and after his demise, the defendants 5 to 8 as the legal heirs of the Khaleel Rahman were in possession and enjoyment of the suit properties. Thereafter, there was a partition between them and the defendants 5 to 8 are in possession and enjoyment of their respective shares. Hence, the plaintiffs and the defendants 1 to 4 have no right in the suit properties.

13. Therefore, from the averments in the written statement filed by the third defendant, there is a categorical denial with regard to the fact that the one Khaleel Rahman took possession of the suit properties in the Court auction. Whereas the defendants 5 to 8 specifically pleaded that the suit



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properties were purchased by their father Khaleel Rahman in the Court auction, which is also the case of the plaintiffs . However, the defendants 5 to 8 denies the rights of the plaintiffs and the defendants 1 to 4 in the suit properties. The defendants 5 to 8 though did not support the case of the plaintiff wholly, they support the case of the plaintiffs partly. Therefore, in the light of the principles laid down in the decision case reported in **2004 (4) MHLJ 620**, the defendants 5 to 8 ought to have been directed by the trial Court to lead evidence before the defendants 1 to 4 get into the box. The learned trial Judge should take into consideration the above principles and proceed accordingly with the trial, without delaying the matter further. Considering the fact that the suit of the year 2016, the learned Principal District Judge, Karur, is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order.

14. With these observations, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

08.08.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes

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K.GOVINDARAJAN THILAKAVADI

cp

To

The Principal District Judge,
Karur.

Pre-delivery order made in
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