BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved : 22/03/2024

Date of Pronounced : 21/06/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P(MD)No.1265 of 2023
and
CMP(MD)No.6213 of 2022

1.M.Antony Jeyaraj
2.M.Antony Selvakumar : Petitioners/Petitioners/Defendants

Vs.

M.Antony Asokan : Respondent/Respondent/Plaintiff

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in IA No.5 of 2020 in OS No.80 of 2020 dated 22/06/2022 on the file of the 1st Additional District Court, Tirunelveli.

For Petitioners : Mr.H.Arumugam

For Respondent : Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.R.T.Arivukumar

O R D E R

This civil revision petition has been filed seeking to set aside the fair and decreetal order passed in IA No.5 of 2020 in OS No.80 of 2020 dated 22/06/2022 by the 1st Additional District Court, Tirunelveli.

2.**The facts in brief**:-

The respondent herein filed a suit in OS No.80 of 2020 seeking the relief of partition and separate possession of his 1/3rd share of the suit property and for costs. Pending suit, an application was taken out by the petitioners herein to reject the plaint under Order 7 Rule 11 CPC. That came to be dismissed by the trial court. Against which, this civil revision petition is preferred.

3.For better understanding of the issue involved, let me briefly extract the relevant portion from the plaint.

4.The plaint reads that the plaintiff and the defendants 1 and 2 are the childrenss of one K.S.Mani Nadar. He possessed substantial properties and running a textile business called 'Ashok Textiles' at Valliyoor. Mery Kamala is the wife of the plaintiff. She had a claim in the textile business. The plaint 'A' schedule property belongs to Late K.S.Mani Nadar and yet to be divided.

5.K.S.Mani Nadar and one Y.Singaraya Nadar started a partnership business in textile in the name of 'Y.SINGARAYA NADAR & K.S.MANI NADAR & CO, in 1950. Later that Firm was dissolved. k.S.Mani Nadar started a separate business in the name of Asoka Textiles. He opened a branch at Panagudi in 1962. The plaintiff after completing his Graduation in Economics and Post Graduation in the year 1972 was helping his father in the business. Later, another textile showroom was opened in the name of K.S.MANI NADAR & SONS at Vadasery, Nagarcoil. The plaintiff was managing the business in Nagarcoil. In the business, K.S.Mani Nadar included his sons as partners. But the entire capitals were invested by K.S.Mani Nadar and not by the sons.

6.Later, the plaintiff was appointed as Assistant Professor in a private college. But however, he was helping his father in the textile business. In 1982, the business in Nagercoil was closed and Panagudi in the year 1983. The entire stocks in both shops were transferred or shifted to the main showroom called Asok Textiles, Valliyoor.

7.Later, they decided to start a business in Valliyoor in name of K.S.MANI NADAR & SONS. Agricultural lands situated in Kesavaneri was sold in 1985 and the entire funds were invested in the new business. It was opened in the year 1985. But later closed in the year

1992. The plaintiff was looking after the business in Eral. After the close, stocks were transferred to Asoka Textile, Valliyoor. At the hard work rendered by the plaintiff and others, the business in Valliyoor started flourishing. But the defendants 1 and 2 started mismanaging the affairs. They promised that the entire property will be utilized for opening and expending the business. Mary Kamala, the wife of the plaintiff, was also included in the partnership business in the place of the plaintiff as he was working the college. After his retirement from service, his name was included in the business. Second defendant's wife namely Annarathi was also included and later removed.

8.On 23/11/1995, K.S.Mani Nadar executed a Will bequeathing the 1st schedule of the property to the plaintiff. 2nd schedule to the 1st defendant. 3rd schedule to the 2nd defendant. 4th schedule to the plaintiff and the defendants 1 and 2 jointly. 5th schedule to the defendants 1 and 2 jointly. He bequeathed his interest in Asoka Textiles business and the plaintiff jointly. After the death of K.S.Mani Nadar on 26/10/2022, the Will came into effect and all the properties belongs to K.S.Mani Nadar was divided between the plaintiff and the defendants 1 and 2 as per Will.

9.The defendants 1 and 2 by diverting the funds from the business, invested in the real estate also. So, the plaintiff is entitled 1/3rd share in that property also. But on 19/04/2017, the plaintiff was informed that he will not be a partner in the new business to be inaugurated on 20/04/2017 in the name of Asoka. No proper explanation was offered over the dismissal. So the two agreements came into between the parties on 20/04/2017 regarding the business. It was agreed that only showroom called 'Asoka' will be owned by the defendants 1 and 2. Another agreement reads that a new business will be started in the same showroom and the plaintiff will be paid Rs.1.50 Crores per year for two years starting from 2018. Thereafter, a new business is started. But after a lapse of 21 months, the defendants 1 and 2 did not satisfy or obey the undertaking. They have decided to retire from the partnership Firm on 11/03/2018 through Advocate notice dated 10/10/2018.

10.In view of the above said development, the plaintiff is entitled to 1/3rd share in the suit mentioned property; mandatory injunction for submission of accounts and permanent injunction for encumbering or alienating the suit properties, etc.

11.Pending further process, a petition was taken out by the petitioners herein in IA No.5 of 2020 under Order 7 Rule 11 CPC to struck off the plaint by raising various points.

12.The trial court after hearing both sides, dismissed the petition stating that there is cause of action for the suit and the plaint is not liable to be rejected.

13.Aggrieved over the same, the this civil revision petition is preferred.

14.Heard both sides.

15.Before we go into the disputed facts, let me briefly narrate the factual background.

16.As stated in the preamble portion and the pleadings of the plaint, it is not in dispute that one K.C.Mani Nadar and one Singaraya Nadar started a partnership business in Textile. Later, they separated and K.S.Mani Nadar established a separate textile establishment called 'Asoka Textiles'. Another branch was opened at Panagudi in 1962. K.C.Mani Nadar included his sons also as partners. They started another textile establishment called 'K.S.MANI NADAR & SONS, Vadasery, Nagercoil. Later, K.S.MANI NADAR AND SONS was closed, so also the Asoka Textiles in Panagudi. The entire stocks in the trade was shifted to Asoka Textiles, Valliyoor, so also another textiles started in Eral was closed and all the stocks were transferred to Asoka Textiles, Valliyoor. Later difference of opinion arose between the brothers. Later the second defendant's wife by name Annarathi was also included in the partnership firm. Now, it has been stated in the plaint that she was removed. Similarly, Mary Kamala has not retired from the partnership Firm so far. After difference of opinion arose between the parties and after the death of the father, the present suit is filed seeking the relief as stated above.

17.The learned counsel appearing for the petitioners would take this court through the plaint pleadings. According to him, even a bare reading of the plaint pleadings will indicate that the suit is filed seeking the relief of partition in respect of A, B & C schedule properties, which are mentioned as shop and other lands, which belongs to the partnership Firm and they are seeking rendition of accounts for the business Asoka Textiles, Asoka Fabrics, Asoka Silks, Asoka Readymades and Asoka Fashion Bazaar. When all the businesses were started, owned and run by a partnership Firm, filing the suit for rendition of accounts without seeking the prayer for dissolution of the Firm is not maintainable for partition and rendition of accounts. Similarly, the prayer for permanent injunction also will not lie, since all the properties are the partnership assets. He is referring to para No.5 last few lines and would submit that the plaintiff has stated that K.S.Mani Nadar included his sons in the partnership Firm, even though, it was started by the father.

18.To substantiate his argument, he is referring to para 21 of the plaint, wherein it has been stated that after the death of K.S.Mani Nadar, the properties were divided as per the provisions of the Will.

19.By pointing out this para, he would submit that the suit properties are not the separate properties of K.S.Mani Nadar. So all the properties, which belongs to K.S.Mani Nadar were already partitioned between the legal heirs. So nothing remains for partition between the legal heirs of K.S.Mani Nadar. According to him, the plaint scheduled properties are the assets of the partnership Firm.

20.He is also referring to para 22. Wherein, it has been stated that the plaintiff and the defendants 1 and 2 agreed to run the Asoka Textile business jointly.

21.He is also referring to para No.24, wherein specifically admitted that the names of the different persons shown as partners namely Mary Kamala, Annarathi, etc. Mary Kamala is not added as a party, suit for rendition of accounts will not lie in the absence of one of the partners.

22.Further, he is referring to para 27 and would submit that by this para, the plaintiff has asserted that the funds diverted from the Asoka Textiles and other Firms mentioned in the plaint. So the properties continued to stand as the assets of the partnership Firm. Para 32 deals about the subsequent agreement, dated 20/04/2017, that was entered stating that the plaintiff and the defendants 1 and 2 are entitled equal share in Asoka Textiles, Valliyoor. The plaintiff will not seek any right in the business called 'Asoka Showroom'.

23.He is also referring to para 35 deals about the notice and obligation, etc. As per this para, the plaintiff has stated that both the above said two agreements did not come into force. So in effect, what is stated in the plaint is that the defendants have not submitted accounts, as stated above, for the business.

24.So in view of the development, now the plaintiff wants partition to be effected; According to him, the first prayer will not lie; Since the Firm is not dissolved so far, the Firm is not impleaded as a party. As mentioned above, K.S.Mani Nadar & Sons is a necessary party. A Firm cannot be equated or compared to joint family properties.

25.In effect, what was the argument is that the plaint framed as such is not maintainable, since it has been framed as if the properties are the joint family properties of the parties. But actually even though, it was started originally as a property of K.S.Mani Nadar, later it was developed as the partnership Firm; Various business establishments were established, but the partnership Firm remains as such till date. In the absence of any dissolution of the partnership, the suit as such framed is not maintainable.

26.The copy of the partnership deed, dated 01/07/2017 is produced before this court. Wherein it has been stated that there are four partners namely M.Antony Asokan, M.Antony Jeyaraj, M.Antony Selvakumar and A.Mary Kamala. Originally, the partner Aannarathi retired from the partnership Firm. But it continued with four partners. As mentioned above, it is admitted that the above said partnership was not dissolved so far.

27.The learned counsel appearing for the petitioners would be referring to the judgment of the Coordinate Bench of this court in ***Narasu's Coffee Co., Vs. R.P.Saratju & others (2014(3) MWN (Civil) 526***. He would also draw the attention to the judgment of the Hon'ble Supreme Court ***in Rajendra Bajoria and others Vs. Hemant Kumar Jalan and others [(2022)12 SCC 641]*** and would submit that when the prayer itself is not maintainable and could not be granted by this court, continuation of the civil proceedings need not be undertaken.

28.Per contra, the learned Senior counsel appearing for the respondent would submit that picking paragraphs and pleadings, here and there, is not permissible to reject the plaint. The plaint as a whole must be read. According to him, 'B' and 'C' schedule properties were derived from Asoka Textiles. The business is not the subject matter for partition. Rendition of accounts is a right of every partner, which will lie. He will be referring to section 9 of the Partnership Act. According to him, the accounts must be taken on 31st March of every year. When that is not taken, remedy available to the aggrieved person is only to sue for rendition of accounts and in that event, dissolution of the partnership Firm need not be sought for.

29.At the last leg of his argument, he would submit that even of 'B' and 'C' properties are the properties of the partnership Firm. 'A' schedule will stand. Because it is not to the business concern and not related to the partnership Firm. It is a joint family property of K.S.Mani Nadar. He will draw the attention of this court to para No.10, which deals about the sources of funds for K.S.Mani Nadar & Sons at Eral and para No.17 about the cause of action for the present suit. He requested this court for a combined reading of para 20 and the prayer in 'A' schedule. So according to him, 'A' schedule property cannot be construed as property of the partnership Firm, even as per the plaint pleadings.

30.He is referring to the judgment of the Hon'ble Supreme Court in ***Dahiben and Arvindbhai Kalyanji Bhanusali [(2020)7 SCC 366.*** He distinguished the judgment of the court in ***Narasu's Coffee Co., case*** and by drawing attention of this court various pleading portions of the order. He would submit that in Narasu's Coffee Co., case, the legal heirs of the retired partner filed the suit.

31.Now even though, elaborate submissions were made on either side, but the issue is narrowed down only to a single point as to whether the properties mentioned in the plaint belongs to the partnership Firm or separate properties and the joint family properties of the plaintiff and the defendants 1 and 2? So, this is the crux of the matter.

32.As mentioned above, it was submitted by the learned Senior counsel appearing for the respondent that even though, 'B' and 'C' schedule properties are considered to be the partnership firm assets, but then 'A' schedule is not.

33.A specific query was raised to the petitioners as to their stand of 'A' schedule properties. He would submit that he is going only by the averments made in the plaint. Only based upon the averments made in the plaint, the petition was filed seeking rejection of the plaint. What was the defence taken by the petitioners may not be relevant in this matter. In effect, what he wants to say is that his defence may not be taken for considering this petition. But when the plaint pleadings and even in the grounds raised by the petitioners says that all the properties belongs to the partnership Firm, but nowhere it is stated that 'A' schedule properties belongs to the firm. That is why, such a defence was advanced by the learned Senior Counsel appearing for the respondent.

34.The learned counsel appearing for the petitioners would submit that even as per the plaint averments in para 21 the joint family properties left by K.S.Mani Nadar were already partitioned. So, according to him, this plaint pleadings itself is sufficient to say that 'A' schedule does not belong to the joint family, which is amendable for partition.

35.Per contra, it is the case of the respondent that 'A' schedule property belongs to the joint family property. So far, it is not partitioned. So on a whole, even if we say that 'B' and 'C' schedule properties are not amenable for partition in view of the specific procedure set out in section 44 of the Indian Partnership Act. The respondent is not able to bring on record any special power conferred upon any one of the partners to file a suit for partition without resorting to section 44 of the Act.

36.Entire reading of the plaint shows that the plaintiff is not satisfied with the management of the affairs of the partnership Firm. When that is being so, he ought to have invoked one of the clauses in section 44 of the Act. But without dissolving the partnership, suit for partition simpliciter will not lie, at least in respect of 'B' and 'C' schedule of properties.

37.At the conclusion of the order, we may refer to the partnership deed, dated 01/07/2017, which was entered into between the parties and Mary Kamala.

38.Reading of the partnership deed does not indicate that right was conferred to any one of the parties to sue for partition of the partnership properties without seeking dissolution of the firm. In short, no right was given to any one of the partners to sue for partition without dissolution. When no right is conferred upon the partners, suit for partition simpliciter in respect of 'B' and 'C' schedule of properties may not lie.

39.Another problem is that there is arbitration clause in the partnership deed. Clause 23 of the deed says that in respect of any issue relating to the partnership dispute, dispute must be resolved by the

Arbitrator. Without resorting to the arbitration clause, filing of the suit simpliciter for partition and rendition of accounts may also not proper.

40.The next question, which arises for consideration is whether in the light of the above said discussion, the plaint can be rejected in part.

41.Partial rejection of plaint is not permissible under law. The Hon'ble Supreme Court in the judgment reported in ***Kum.Geetha Vs. Nanjundaswamy and others (2023 INSC 964)*** held that in an application under Order VII Rule 11, CPC, a plaint cannot be rejected in part. The suit must be tried to its logical conclusion.

42.For all the reasons stated above, this civil revision petition fails and the same is **dismissed.** No costs. Consequently connected Miscellaneous Petition is closed.

21/06/2024

Index:Yes/No
Internet:Yes/No
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To,

1. The 1st Additional District Court,
   Tirunelveli.

2. The Section Officer,
   ER/VR Section,
   Madurai Bench of Madras High Court,
   Madurai.

G.ILANGOVAN, J

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C.R.P(MD)No.1265 of 2023

21/06/2024