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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.03.2025

PRONOUNCED ON : 13.03.2025

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD)No.513 of 2025

and

C.M.P(MD)No.2809 of 2025

C.Shanmugaraja

...Petitioner/2nd Respondent/2nd Defendant

Vs.

1.J.Rathina Kamala

...1st Respondent/Petitioner/Plaintiff

2.Tamilarasi

...2nd Respondent/1st Respondent/1st Defendant

3.T.Muthulakshmi

4.C.Balasubramanian

5.C.Selvi

6.A.Thangamariappan

7.S.Johnson

...Respondents 3 to 7/Respondents 3 to 7/
Defendants 3 to 7

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the order and decreetal order in I.A.No.3 of 2024 in O.S.No.276 of 2022, dated 04.12.2024 on the file of III Additional District Court, Tirunelveli, and allow this Civil Revision Petition with costs.

For Petitioners : Mr.R.Ponkarthikeyan

For Respondents : Mr.V.Meenakshi Sundaram for R1

* * * * *



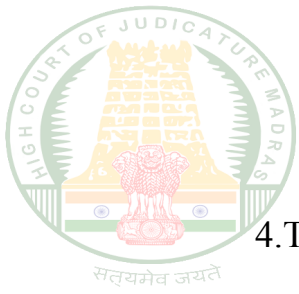
ORDER

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The second defendant in O.S.No.276 of 2022, on the file of the Third Additional District Court, Tirunelveli, has filed the above revision petition, challenging an order issued by the trial Court directing the second defendant to let in evidence first.

2.A perusal of the records reveal that the first respondent in the revision petition had filed the above said suit for the relief of partition and separate possession of her alleged 1/6 share in the suit schedule properties and in the accumulated rent collected from the buildings in the first and second schedule properties, which is shown as the third schedule property.

3.Both the suit schedule properties were the absolute properties of the father of the plaintiff and the defendants 1 to 5, namely, M.S.Chidambaram Nadar. He had died intestate leaving behind his wife Unnamalai Ammal and his sons and daughters. The wife of M.S.Chidambaram Nadar, namely, Unnamalai Ammal had also died intestate in October 2012. The plaintiff and the defendants 1 to 5 are each entitled to 1/6 shares of the properties. These facts are not disputed in the written statement filed by the second defendant.



4.The second defendant in his written statement had contended that he had borrowed bank loan to an extent of Rs.4,50,000/- for renovating the second suit schedule property. He had further contended that the property of Unnamalai Ammal is located in Pettai Sundara Vinayagar Temple, 18 sovereigns of jewels, bank deposit of Rs.4,04,000/- and Rs.10,00,000/- worth household items were left behind by the said Unnamalai Ammal. They have not been included in the partition suit. Similarly, the father of the plaintiff and the defendants 1 to 5 was the owner of 1.08 acres of Nanja land. This property has also not been included. Therefore, the suit is bad for partial partition.

5.The second defendant has further contended that the female legal heirs, namely, the plaintiff, the defendants 1, 3 and 5 have already orally relinquished their shares in the suit schedule property, 48 years back. In the said oral partition, the first item was allotted to the fourth defendant and second item was allotted to the second defendant. Since already partition has taken place, the present suit for partition is not maintainable.

6.The plaintiff had filed I.A.No.3 of 2024, under Order 18 Rules 1 and 2 of C.P.C. for a direction to the second defendant to start his evidence before the plaintiff side evidence. It is alleged in the said petition that after admitting relationship, shares and the character of the property, has taken the defence that



already oral partition has taken place. In such circumstances, the second defendant alone has to be directed to let in evidence first.

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7.The second defendant has filed counter contending that apart from oral partition, he has also taken a stand that the suit is bad for partial partition. The suit has been undervalued and proper Court fee has not been paid. The second defendant has further contended that suppressing various facts, the suit has been filed for partition. In such circumstances, the question of issuing a direction to the second defendant to begin the case does not arise.

8.The trial Court after considering the pleadings and submissions made on either side, has proceeded to allow the application on the ground that when the shares of the parties are admitted and the second defendant claims that already partition had taken place, the said fact has to be proved by the second defendant alone. Based upon the above said observations, the trial Court had directed the second defendant to begin the case. Challenging the same, the present revision petition has been filed by the second defendant.

9.According to the learned Counsel appearing for the revision petitioner, when several defences, apart from the plea of oral partition, have been taken, in such circumstances, the Court cannot issue a direction to the defendants to prove begin first. He further contended that the right to begin, is a right



conferred upon a particular party to let in evidence at the first instance. This provision cannot be used to compel the defendants to let in evidence first.

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10.The learned Counsel appearing for the revision petitioner has relied upon the Division Bench Judgment of our High Court reported in **2010 (5) Law Weekly 454**, and contended that the right mentioned under Order 18 Rules 1 and 2 of C.P.C. would not give the plaintiff a further right to compel the defendant to produce his evidence at the first instance. The leaned Counsel appearing for the revision petitioner has also relied upon the judgment of our High Court reported in **2017 (1) CTC 305**, wherein, this Court has held that the defendant cannot be compelled to adduce evidence first, when multiple grounds have been raised in the written statement. When several defences are taken by the defendant in his written statement, the trial Court was not correct in directing the defendant to let in evidence at the first instance. Relying upon the said decisions, the learned Counsel appearing for the revision petitioner had contended that when a plea of partial partition, undervaluation of the suit and suppression of the material facts have been raised, as defences, apart from oral partition, the defendant cannot be compelled to adduce evidence first.

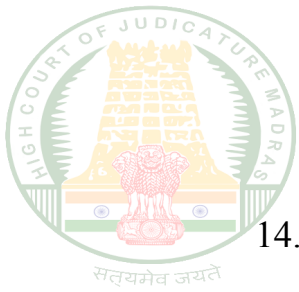
11.Per contra, the learned Counsel appearing for the respondents herein had contended that the second defendant, having admitted the character of the property, quantum of shares and the fact that M.S.Chidambaram Nadar had died



intestate has to adduce evidence first. The plaintiff and other defendants who are sailing with the plaintiff had filed an affidavit before this Court to the effect that the plea of partial partition though raised in the written statement, would not affect the result of the suit. In paragraph Nos.6 and 7 of the said affidavit, it is contended that as far the properties of Unnamalai Ammal is concerned, those properties are yet to partitioned among the siblings of Unnamalai Ammal. In such circumstances, those properties cannot be included in the present suit which has been laid for partition of the properties of M.S.Chidambaram Nadar.

12.It is further contended on the side of the respondents that as far as the property of 1.08 of Nanja land in Argunukulam Village, Tirunelveli Taluk, is concerned, the said property is not a family property and the second defendant is at liberty to take the said property absolutely without affecting his right of 1/6 shares in the suit schedule property.

13.Relying upon the above said affidavit, the learned Counsel appearing for the respondents herein had contended that when the plea of the partial partition had already been answered in the reply statement filed by the plaintiff and by way of affidavit before this Court, no other defence has been made out by the second defendant to oppose the prayer for partition. In such circumstances, the entire burden would be upon the second defendant to establish the plea of oral partition. Therefore, the trial Court has rightly allowed the application and has directed the second defendant to begin the case.



14.The learned Counsel appearing for the respondents has also relied upon the Hon'ble Division Bench of our High Court reported in **2010 (5) Law Weekly 454**, wherein the Hon'ble Division Bench in paragraph No.28 has held that the question of defendant beginning the case would arise only in cases wherein the defendant admits the facts alleged in the plaint and contends that either on point of law or on some additional facts alleged by him, the plaintiff is not entitled to any part of the relief which he seeks. Hence, in the present case, the defendant having admitted the character of property, relationship and shares, is duty bound to produce his evidence first.

15.I have considered the submissions made on either side and perused the materials available on record.

16.The written statement filed by the second defendant reveals that he has admitted the relationship between the parties, the character of the property and the quantum of shares. However, the defendant has taken a specific stand in paragraph Nos.8 and 9 of the written statement that the suit is bad for partial partition for not including certain properties of Unnamalai Ammal (Mother) and one of the properties of M.S.Chidambaram Nadar (Father). Apart from this defence, the second defendant has also contended that the female legal heirs of the M.S.Chidambaram Nadar have orally relinquished their shares. It has further



averred in the written statement that by way of oral partition, the first item was allotted to the fourth defendant and the second item was allotted to the second defendant.

17.It is the case of the plaintiff and the other defendants sailing along him, that in the reply statement as well as the affidavit filed before the Court, they have explained the circumstances in which the properties of Unnamalai Ammal and M.S.Chidambaram Nadar have not been included in the suit. Whether the explanation offered by the plaintiff relating to partial partition, is legally acceptable or not, has to be decided only based upon oral and documentary evidence. In case, if the trial Court arrives at a finding that the explanation offered by the plaintiff is not legally sustainable, then the suit for partition would fail on the ground of partial partition. Merely upon the reply statement and the affidavit filed before this Court, this Court cannot brush aside the defence taken by the second defendant in his written statement, relating to partial partition. In such circumstances, the defendant cannot be compelled to adduce evidence first.

18.The trial Court merely relying upon the plea of oral partition taken by the second defendant, has proceeded to pass the impugned order without considering the plea of partial partition and the effect of explanation offered by the plaintiff in his reply statement. In such circumstances, the burden would be



upon the plaintiff to establish that she is legally entitled to exclude the property standing in the name of Unnamalai Ammal and another property of M.S.Chidambaram Nadar. Hence, the impugned order of the trial Court is liable to be set aside. Accordingly, it is set aside.

19.In the result, this Civil Revision Petition stands allowed. No costs.
Consequently, connected miscellaneous petition is also closed.

13.03.2025

Internet:Yes/No
Index:Yes/No
RJR

To

The III Additional District Judge, Tirunelveli.

Copy to:-

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



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C.R.P.(PD)(MD)No.513 of 2



R.VIJAYAKUMAR, J.

RJR

Pre-delivery order made
in
C.R.P.(PD)(MD)No.513 of 2025
and
C.M.P(MD)No.2809 of 2025

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