

(2013) 11 MAD CK 0168

In the Madras High Court

Case No : A. No. 4029 of 2013 in C.S. No. 474 of 2013

K. Madhavan Naidu, Mrs. K. Radhadevi, K. Ramesh and Ms. K. Ramya APPELLANT

Vs

Mrs. Rajini Balakrishnan, Mrs. V. Revathi and Mrs. Rama Gunasekaran RESPONDENT

Date of Decision : 18-11-2013

Acts Referred:

Citation : (2013) 4 KLT 859

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Advocate : R. Thiagarajan, for the Appellant; T.V. Krishnamachari for 1st Respondent, for the Respondent

Final Decision : Dismissed

Judgement

R. Subbiah, J.—The present application has been filed to pass an order revoking the leave granted in Application No. 2901 of 2013 in C.S. Diary No. 193113 of 2013 dated 10.7.2013 and dismiss the suit. For the sake of convenience, the applicants are referred to as the defendants and the respondents are referred to as the plaintiffs.

2. The plaintiffs have filed the suit in C.S. No. 474 of 2013 as against the defendants for partition, claiming separate possession of their 3/5th share in plaint "A" and "B" schedule properties.

3. It is the case of the plaintiffs that they are sisters. The suit properties are the ancestral co-parcenary properties and the plaintiffs are entitled to 1/5th share each in the suit properties. As per the Section 6 of the Hindu Succession Act, 1956 as amended by Act 39 of 2005, the daughters are also coparceners. Applying the said provision to the facts of the present case, the plaintiffs are entitled to 3/5th share in the suit "A" and "B" schedule properties. Hence, they have filed the present suit for partition as against the defendants. Except

schedule "A" item No. 5, which is situated at Old No. 103, then Door No. 166, New No. 86, Kutcherri Road, Mylapore, Chennai-4, all other suit properties are situated outside the jurisdiction of this Court. Further, the defendants are also residing at Mugappair, Chennai, which is outside the jurisdiction of this Court. Hence, the plaintiffs have filed an application for grant of leave to file the suit as against the defendants before this Court. This Court, by an order dated 10.7.2013 granted leave. Now, the present application has been filed by the defendants to revoke the said leave granted by this Court on 10.7.2013.

4. In the affidavit filed in support of the application to revoke the leave, it has been stated that the suit schedule properties consist of six items in the "A" schedule. All the properties, except item No. 5, are situated at Tiruvallur District. Similarly, item No. 1 of the "B" schedule property is also situated at Tiruvallur District. The second plaintiff is residing within the jurisdiction of Ponneri Taluk, Tiruvallur District and the third plaintiff is also residing at Hosur, Krishnagiri District, which is outside the jurisdiction of this Court and all the records pertaining to the suit transactions are available at Tiruvallur which is outside the jurisdiction of this Court. Further the major items of properties are located outside the jurisdiction of this Court viz., within the jurisdiction of the District Court, Thiruvallur. The suit involves adjudication of title of the plaintiffs in relation to their claim in respect of the suit properties and also with regard to the adjudication of the claim as to whether the plaintiffs are entitled for a share or not, have to be gone into by this Court. The adjudication and control of the properties would attract the suit on land over which this Court shall not have any jurisdiction to decide the issue since major items of properties situate within the jurisdiction of Thiruvallur District. Thus, the defendants sought for revocation of the leave granted by this Court.

5. I have heard the submissions of the learned counsel appearing for the applicants/defendants and the learned Senior Counsel appearing for the respondents/plaintiffs.

6. Learned counsel appearing for the applicants/defendants submitted that except item No. 5 of suit "A" schedule property, all other properties are situated at Tiruvallur District. The defendants are also residing at Mogappair, Chennai, which is outside the jurisdiction of this Court. Considering the convenience of the parties and also the undergoing ordeal of the trial, the leave granted by this Court has to be revoked. In support of this contention, learned counsel appearing for the defendants relied upon the judgment reported in S. Palaniappan Vs. P.L. Sethuraman Chettiar and others, and submitted that in similar situation, the Division Bench of this Court upheld the revocation of the leave ordered by the Single Judge of this Court. Further, the learned counsel appearing for the defendants has relied upon the judgment reported in Parameswari Veluchamy and Others Vs. T.R. Jayaraman and Others .

7. On the other hand, learned Senior Counsel appearing for the respondents/plaintiffs submitted that the house property which is situated within the

jurisdiction of this Court alone is the valuable property and all other properties are only agricultural lands. Moreover, the suit was filed by the daughters in the capacity of coparceners as per Section 6 of the Hindu Succession Act, 1956 as amended by Act 39 of 2005. In a suit for partition filed in the capacity of coparcenary, the plaintiff can always choose the forum where a part of cause of action arose. In this regard, the learned Senior Counsel appearing for the plaintiffs relied upon the same judgment relied on by the learned counsel appearing for the defendants reported in Parameswari Veluchamy and Others Vs. T.R. Jayaraman and Others .

8. I have heard the submissions made on either side and perused the materials available on record.

9. It is the main submission of the learned counsel appearing for the defendant that except item No. 5 of suit "A" schedule property, all other properties are situated outside the jurisdiction of this Court and the defendants are also residing outside the jurisdiction of this Court and hence, the leave has to be revoked. Further, the Division Bench of this Court in the decision reported in S. Palaniappan Vs. P.L. Sethuraman Chettiar and others, , has upheld the revocation of the leave ordered by the Single Judge of this Court. But, on a perusal of the facts of that case, I find that in that case, the suit was not filed for partition of the coparcenary properties. Moreover, in that case, most of the defendants are residing in different part of Tamil Nadu, viz., Pudukkottai, Dindugul, Valayapatti, etc., The first defendant thereon was aged about 85 years and all the witnesses were also residing far away from the jurisdiction of this Court. Only "A" schedule property was situated in the city of Chennai and only in that situation, by considering the convenience of the parties, the leave granted by this Court was revoked.

10. The factual aspect of the case reported in Parameswari Veluchamy and Others Vs. T.R. Jayaraman and Others would show that a suit for partition was filed before this Court claiming 1/11th share in the properties situated within Chennai. But all the defendants and two of the three plaintiffs were residing outside the jurisdiction of this Court. In the said situation, the Division Bench of this Court has revoked the leave already granted and directed the plaintiff thereon to present the suit in proper forum.

11. So far as the case on hand is concerned, the suit has been filed in the capacity of coparcenar of the property as per Section 6 of the Hindu Succession Act, 1956 as amended by Act 39 of 2005. In fact, the decision reported in Parameswari Veluchamy and Others Vs. T.R. Jayaraman and Others relied upon by the learned counsel appearing for the defendants gives a fitting answer for the issue involved in this application and the relevant portion from the said judgment is usefully extracted hereunder:-

20. The suit brought by the plaintiffs though it is in part a suit for land situated within the jurisdiction of this Court, is primarily a suit for a share in the

properties which are situated outside the jurisdiction of the court, all the defendants being residents outside and carrying on business outside the jurisdiction of this Court. The suit is not similar to one wherein a person entitled to a share in the joint family property can bring a suit in this Court for a share in the joint family property by saying that some of the joint family properties are situated within the jurisdiction of this Court. According to the plaintiffs own case, there is no coparcenary property. In the plaint, there is no averment regarding the properties in Madras mentioned in the plaint schedule by whom it was acquired, when it was acquired, mode of acquisition, consideration paid therefor etc. No document in relation to these properties was filed with the plaint. On the other hand the documents produced by the plaintiffs clearly show that those three items were purchased by some of the defendants nearly two decades after the demise of their father in whose estate the plaintiffs claim a share.

12. A reading of the above passage would show that it was not the suit for partition of coparcenary property. The factual aspect of that case would show that the properties in that case were purchased by the defendants thereon after the demise of their father, in whose estate the plaintiff claimed a share. Only in that factual background, this Court has revoked the leave.

13. So far as the present case is concerned, the suit was filed for partition of coparcenary properties. Hence, the judgment relied upon by the learned counsel appearing for the applicants/defendants cannot be made applicable to the facts of this case. Further, under clause 12 of Letters Patent Act, the question of convenience of the parties is not the question to be considered while granting leave. Even if a part of cause of action arose within the jurisdiction of this Court, this Court may either grant leave or decline it, considering the facts and circumstances of each case. In this regard, a reference could be placed in the same judgment reported in *Parameswari Veluchamy and Others Vs. T.R. Jayaraman and Others* and para 17 of the said judgment is usefully extracted hereunder:-

17. In support of his submission that the balance of convenience is indeed a very relevant factor, Counsel relied on a Division Bench decision of this Court in *Seshgiri Row v. Nawab Asker Jung Aftal Dowlah*, ILR 30 Mad. 438. The Bench in that decision considered the scope of clause 12 and held that "having regard to the wording of Article 12 it is clear that the fact that the cause of action arises in part within the local limits is not conclusive and that notwithstanding that the cause of action arises in part within the local limits, the Court may decline to give leave to sue.

As regards the law of this Court, so far we are aware it has never been held that the question of convenience is not a question which may be taken into consideration in dealing with the applications under Article 12, and we are certainly not prepared to hold that this question should be excluded from consideration.

In the instant case, I find that all the defendants are residing at Mogappair, situate in the outskirts of the City. The valuable property is situated within the jurisdiction of this Court. Moreover, the suit was filed for partition of the suit property claiming share under the capacity of co-parceners, as per Section 6 of the Hindu Succession Act, 1956 as amended by Act 39 of 2005. The coparcenary has a right to sue in the forum where a part of cause of action arose. Therefore, I do not find any infirmity in the leave granted by this Court.

14. In view of the discussions made above, I am of the opinion that the application is not entitled for the relief as prayed for in this application. In fine, the application is dismissed. No costs.