
(2014) 04 MAD CK 0058

In the Madras High Court

Case No : C.R.P. (NPD) No. 1061 of 2007 and M.P. No. 1 of 2007

P. Santha

APPELLANT

Vs

S. Arumugam, N. Mani, R. Natesan and Ramasamy Gounder

RESPONDENT

Date of Decision : 30-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58, 151, 47
Hindu Succession (Amendment) Act, 2005 — Section 6(1)(c)
Hindu Succession Act, 1956 — Section 6

Citation : (2014) 3 LW 827

Hon'ble Judges : R. Karupiah, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R. Karupiah, J.—This revision petition is filed by the third party in the execution proceedings against the fair and decreetal order dated 20.12.2006 made in REA No. 137 of 2006 in REP No. 19 of 2005 in O.S. No. 26 of 2003 on the file of Subordinate Court, Sankari.

2. The 1st respondent/decreet holder in O.S. No. 26 of 2003 filed the execution petition in REP No. 19 of 2005 against the 2nd respondent herein namely Mani, for realisation of decreetal amount and also seeking attachment of properties belonged to the 2nd respondent herein/judgment-debtor.

3. During the pendency of the above said proceedings, the revision petitioner, who is third party in the above said proceedings filed an execution application in REA No. 137 of 2006 u/s 47, Order 21 Rule 58 and Section 151 CPC against the 1st respondent/decreet-holder and also two other third parties namely Natarajan and Ramasamy Gounder. In the above said application, the case of the revision petitioner is that the properties sought for attachment in the execution proceedings are ancestral properties and the revision petitioner is the daughter of the 3rd respondent. The 2nd respondent/judgment-debtor is brother of the revision petitioner and the 4th respondent is the grand father of the revision

petitioner. According to the revision petitioner, the respondents 2 to 4 and one Nallaya Gounder and his family members partitioned their properties by virtue of a registered partitioned deed dated 22.11.1984 and in the above said partition deed, the properties sought for attachment allotted to the respondents 2 to 4 herein. It is further stated that the revision petitioner and the respondents 2 to 4 are enjoying the properties without any division and hence, the revision petitioner is entitled to 1/6 share in the above said properties. The 1st respondent/deed holder brought the properties for sale as if the 2nd respondent is entitled to 1/3rd share but the 2nd respondent is only entitled to 1/6 share in the above said properties. As per Hindu Succession Act, 1956 and amended Act, 2005 (39 of 2005), by birth the revision petitioner is entitled to the share in the Hindu coparcenary properties u/s 6 as the daughter of the coparcener. Therefore, prayed for exclude 1/6 share of the revision petitioner from the sale.

4. The 1st respondent/deed-holder filed a counter, in which, it is denied the contention of the revision petitioner and stated that the respondents 2 to 4 and one Nallaya Gounder and his family members partitioned their properties by virtue of a registered partition deed dated 22.11.1984. In the above said partition, the properties sought for attachment were allotted to the respondents 2 to 4 is true. But, the respondents denied as false that the petitioner and the respondents 2 to 4 are enjoying the properties, without any division and the revision petitioner is entitled to 1/6 share. The 2nd respondent/judgment-debtor had borrowed the amount from 1st respondent/deed holder and the 1st respondent filed suit and got a decree. Since not paid the decree amount the 1st respondent brought the properties for sale. Further, the revision petitioner married before 20 years and she is not in the joint family of the respondents 2 to 4 and hence, she is not entitled to any share in the properties. Therefore, prayed for dismissal of the above said application.

5. The 2nd respondent/judgment-debtor has filed a separate counter in which, it is admitted that the properties were partitioned under registered partition deed dated 22.11.1984. It is also stated that ever since, the above said partition the revision petitioner and the respondents 2 to 4 are enjoying the properties without any division and the revision petitioner is entitled to 1/6 share, the 2nd respondent is entitled to 1/6 share and 4th respondent is entitled to 3/6 share since the properties are ancestral properties.

6. After hearing both sides, the execution court dismissed the above said application filed by the revision petitioner. Aggrieved over the above said findings of the execution court, this revision petition has been filed by the revision petitioner.

7. Heard the learned counsel appearing for the revision petitioner and the 1st respondent.

8. Admittedly, the 1st respondent has filed execution petition in REP No. 19 of

2005 on the basis of decree and judgment passed in O.S. No. 26 of 2003 for realisation of decree amount and by way of sale of attached properties belonged to the 2nd respondent herein, who is judgment-debtor in the above said suit. It is also admitted that the above said properties were already attached during the pendency of the suit.

9. In the above said circumstances, the revision petitioner, who is third party in the suit filed this revision petition and prayed for exclude 1/6 share by stating that the revision petitioner is entitled to 1/6 share since the suit properties are ancestral properties.

10. The relationship stated in the revision petition is not in dispute and also admitted that the respondents 2 to 4 and one Nallaya Gounder and his family members partitioned their properties by virtue of a registered partition deed dated 22.11.1984, in which, B-schedule properties in the partition deed were allotted to the respondents 2 to 4. The revision petitioner is the daughter of 3rd respondent and it is also not in dispute that the revision petitioner married 20 years prior to filing of the claim application. On the side of the revision petitioner has not produced any materials to prove that the revision petitioner also jointly enjoying the properties, after the alleged partition deed dated 22.11.1984, along with the respondents 2 to 4.

11. The learned counsel appearing for the revision petitioner submitted that as per Section 6 of the Hindu Succession Act, 1956 Amended Act of 39 of 2005, the revision petitioner is entitled to 1/6 share by birth and therefore, prayed for to exclude the above said 1/6 share in the above said execution proceedings.

12. Per contra, the learned counsel appearing for the 1st respondent/decreed holder submitted that the revision petitioner married 20 years prior to filing of the application and the properties were divided as per registered partition deed dated 22.11.1984 itself and in which, the properties were allotted to the respondents 2 to 4. Further the learned counsel submitted that the Hindu Succession Act is (amended) only in the year 2005 and the amended central Act was came into force on 09.09.2005 and amended the Hindu Succession (Tamil Nadu) State Act, also came into force only in the year 1989. Therefore, the revision petitioner is not entitled to any share in the suit properties. It is relevant to extract the provisions of Section 6 of the Central Act reads as under:-

6. Devolution of interest in coparcenary property.-

1. On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,-

- a) by birth become a coparcener in her own right in the same manner as the son;
- b) have the same rights in the coparcenary property as she would have had if she had been a son;

c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

2. Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary Act, or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

3. Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,-

a) the daughter is allotted the same share as is allotted to a son;

b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or such pre-deceased daughter; and

c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation:- For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

13. The learned counsel appearing for the 1st respondent submitted that as per the above said provisions, the revision petitioner is not entitled to any share since the partition among the family members effected in the year 1984 and the revision petitioner also married 20 years ago and she is not jointly enjoying the properties for more than 20 years and therefore, the revision petitioner is not entitled to any share in the suit properties. The learned counsel further submitted that even assuming the revision petitioner is one of the coparcener, the revision petitioner is also liable to pay the amount borrowed from the 1st respondent by the 2nd respondent in view of Section 6(1)(c) of Hindu Succession (Amendment) Act 2005. Further, the learned counsel submitted that the revision

petitioner has filed a claim application u/s 47, Order 21 Rule 58 and 151 CPC, but, the revision petitioner is not a party in the above said suit or execution proceedings and therefore, as per the above said provisions, the revision petitioner is not entitled to file the claim application.

14. A careful perusal of the above said provisions revealed that the revision petitioner, who is third party in the proceedings is not entitled to file claim application since the revision petitioner is not a party to the proceedings or their representatives as rightly pointed out by the learned counsel appearing for the 1st respondent.

15. Further, the learned counsel for the 1st respondent submitted that the 1st respondent has got decree against the 2nd respondent and filed execution proceedings, but, the 2nd respondent/judgment-debtor delayed the above said proceedings and also instigated the revision petitioner and others to file frivolous applications to delay the execution proceedings and therefore, the revision petition is liable to be dismissed.

16. The learned counsel appearing for the 1st respondent relied on a decision reported in Ravinder Kaur Vs. Ashok Kumar and Another, , in which, it is stated in para 22 reads as under:-

22.... Courts of law should be careful enough to see through such diabolical plans of the judgment-debtors to deny the decree-holders the fruits of the decree obtained by them. These type of errors on the part of the judicial forums only encourage frivolous and cantankerous litigations causing law's delay and bringing bad name to the judicial system.

17. In the instant case, as rightly pointed out by the learned counsel appearing for the 1st respondent/decreed-holder is that only to delay the proceedings the revision petitioner has filed the application with false contention and therefore, the revision petition is liable to be dismissed.

18. In the result, the revision petition is dismissed and confirmed the order of the courts below. No order as to costs. Consequently, connected miscellaneous petition is closed.