
(1996) 09 MAD CK 0083
In the Madras High Court

Saraswathi Ammal

APPELLANT

Vs

Unnamalai Ammal and Others

RESPONDENT

Date of Decision : 27-09-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (1997) 1 LW 171 : (1997) 1 MLJ 410

Hon'ble Judges : Raju, J

Bench : Single Bench

Judgement

Raju, J.—Learned Counsel for the petitioner has made as endorsement on the case bundle as follows:

The C.R.P. Nos. 2138 and 2139 of 1996 are withdrawn with liberty to file fresh suit.

The learned senior counsel even on the prior hearing has been apprised that this Court cannot give any liberty to the petitioner to file a fresh suit, and it is for the petitioner to either pursue the revisions by making submissions on the merits of the revisions themselves or withdraw the revisions if she so desires. As a matter of fact submissions were also made on merits initially, though at a later stage, adjournment was taken. But in spite of the same, endorsement has been made by the counsel on record as above on his own volition.

2. C.R.P. No. 2138 of 1996 has been filed against the order dated 13.10.1995 dismissing the unnumbered I.A. filed on 31.7.1995 for seeking the relief of substituting the fourth defendant as the plaintiff to enable him to pursue and prosecute the suit further. C.R.P. No. 2139 of 1996 has been filed against the order dated 13.10.1995 rejecting the unnumbered application filed under Order 1, Rule 10 and Order 23 seeking for impleading the fourth respondent/petitioner as the legal representative of the plaintiff to pursue and prosecute the suit further. Both the above applications have been rejected on the ground that they have been filed beyond the period of limitation prescribed therefor, the plaintiff

having died on 30.4.1995 itself.

3. Inasmuch as the endorsement of withdrawal has been made with a condition it becomes necessary for this Court to deal with the revisions on merits, since it is my view that no liberty can be granted as prayed for by this Court.

4. The copy of the plaint in O.S. No. 37 of 1995 on the file of the District Munsif Court, Ranipet filed in the typed set of papers would disclose that the deceased plaintiff by name Munuswamy Naicker has filed the suit for declaration that the will dated 5.5.1994 executed and registered by the plaintiff under document No. 37/94 on the file of the Sub Registrar, Arcot, North Arcot Ambedkar District in favour of the legatees, viz., the defendants in the suit is true, valid and enforceable in law. From the averments in the plaint, it is seen that the defendants 1 to 4 are the daughters of the deceased plaintiff and the fifth defendant is the husband of his pre-deceased daughter by name Krishnaveniammal that on an earlier occasion, the plaintiff in his capacity as the owner of the suit schedule property has entitled the property in favour of the first defendant under two settlement deeds dated 21.3.1980 and 31.3.1989, the copies of which were annexed as documents 1 and 2 to the plaint. The further claim as disclosed from the plaint averments is that the earlier settlements were effected as above on conditions that the settle will meet all the medical and other expenses including the maintenance of the plaintiff and since the first defendant failed to carry out her obligations, the plaintiff was compelled to revoke the settlements for valid and justifiable grounds as evidenced by the deed of revocation dated 5.5.1994 and the will dated 5.5.1994 whereunder the plaintiff appears to have given the property in favour of his heirs including the first defendant and the heirs of the deceased daughter in equal moiety. The plaintiff also has stated that in order to thwart the plaintiff's desire to benefit the legatees under the will, the first defendant has chosen to file O.S. No. 702 of 1994 on the file of the District Munsif Court, Ranipet seeking for permanent injunction on the ground that she is the absolute owner of the property allegedly suppressing the real and material facts as regards the revocation of the settlements and this necessitated the filing of the suit. With the death of the deceased plaintiff, even if the case is to be viewed on the allegations contained in the plaint, all parties/defendants would be the legal heirs and therefore, it becomes a futile exercise as also inappropriate to implead only the fourth defendant as the plaintiff to pursue the proceedings when even according to the case in the plaint, all the persons will be heirs entitled to be on record. In view of the above, the disclosure of the applications filed appears to be genuine and justified not only for the reason assigned by the learned Judge in the court below but for the other reasons as well pointed out in this order. The petitioner cannot by seeking to withdraw these revisions claims for leave to file a fresh suit, since she is neither the plaintiff nor she is withdrawing any suit as such. Consequently, the revisions shall stand dismissed. C.M.P. No. 11752 of 1996 is also dismissed.

5. The dismissal of the revisions shall not stand in the way of the petitioner

vindicating her rights if any, she has in accordance with law. It is made clear that if the petitioner is otherwise eligible and entitled to file any suit to vindicate her rights in accordance with law, this dismissal of the revisions alone as that account shall not stand in the way of her such rights which she could otherwise claim to enforce in law. Schedule: N.A. A. District - Arcot Taluk, Arcot Town - Thoppukanda West Thiruvankadam Street, Tiled house with vacant site - bearing door No. 26 - bounded by - 1 to the east of Raji Naicker's vacant site; 2 to the south of Shanmugam's house and Balasundara Vinayagar Temple's Rice Mill; 3. to the north of Rathina Naicker and Ponnusamy Naicker's house and 4. To the west of Thiruvankadam Street - measuring East West 80 feet and North South - 11 feet tiled house measuring East West 48 1/2 feet and North South Western side 18 feet of Eastern side 16 1/2 feet, including both walls - with all fixtures - electric service - Well.