
(2009) 01 MAD CK 0357

In the Madras High Court

Case No : C.R.P. (PD) 3398 of 2008 and M.P. No. 1 of 2008

Venkatesan, Sellapan @ Selvam and Rasammal

APPELLANT

Vs

Indirani

RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 9

Citation : (2009) 01 MAD CK 0357

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : N. Manokaran, for the Appellant; T. Murugamanickam, for the Respondent

Judgement

G. Rajasuria, J.—Animadverting upon the order dated 20.08.2008 passed by the learned Subordinate Judge, Sankari in I.A. No. 353 of 2008 in O.S. No. 74 of 2007, this civil revision petition is focussed.

2. Heard the learned Counsel for the petitioner as well as the learned Counsel appearing for the respondent.

3. A summarisation and summation of the relevant facts, as stood exposed from the records could succinctly and precisely be set out thus:

The revision petitioner/plaintiff herein filed the suit in O.S. No. 74 of 2007 seeking the following reliefs:

To divide the suit properties into 16 equal shares by allotting 5/16 shares in favour of plaintiff, by putting her in separate possession by appointment of commission, making provisions for passing of final decree.

to restrain the defendants 1 to 3 from any way alienating the suit properties including 5/16th share of the plaintiff by way of permanent injunction in favour of third parties till final decree is passed.

The defendant filed written statement; whereupon the trial commenced. During

the pendency of the trial I.A. No. 353 of 2008 was filed seeking permission to file additional written statement under Order 8 Rule 9 of the Code of Civil Procedure. However, the trial Court dismissed it. Being aggrieved by and dissatisfied with the said order, this revision is focussed on various grounds.

4. The learned Counsel for the revision petitioners/defendants, placing reliance on the grounds of revision, would develop his argument to the effect that the date of death of the propositus is crucial in this case as depending upon the date of the death of him alone, the right of his daughters would be able to be adjudged. According to the learned Counsel, in the affidavit of the written statement, they also took the plea of non-joinder of necessary parties, viz., the daughters of the deceased propositus and other sharers and unless the petitioners are given the liberty to file additional written statement raising all these points, the defence of the revision petitioners before the lower court would get defeated.

5. Whereas the learned Counsel for the respondent/plaintiff would highlight that there are laches on the part of the revision petitioners in filing the additional written statement and after the commencement of the trial, they are having no right to seek the permission of the Court to file additional written statement.

6. A bare perusal of the order of the lower Court would exemplify and demonstrate that the delay aspect loomed large in the mind of the lower Court and accordingly, it dismissed the I.A.

7. I would like to highlight that this is a suit for partition in which the plaintiff would be the defendant and vice versa. Hence, taking into consideration the fact that this is a partition suit and due opportunity has to be given for the defendants also to raise all the pleas, I would like to permit the revision petitioners to file the additional written statement, however on cost of Rs. 1,000/- payable by the revision petitioners to the respondent within a period of one week from the date of receipt of a copy of this order. On payment of such cost and on filing of such additional written statement, the plaintiff will have the right to file reply statement.

8. With the above observation, this civil revision petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.