

Vasagam Vs. 1. Jothi

Vasagam Vs. 1. Jothi

SooperKanoon Citation : sooperkanoon.com/964394

Court : Chennai

Decided On : Jan-02-2013

Judge : G.Rajasuria

Appellant : Vasagam

Respondent : 1. Jothi

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

02. 01/2013 CORAM THE HONOURABLE MR.JUSTICE G.RAJASURIA
C.R.P.(PD)(MD)No. 2707 of 2012 and M.P.(MD)No.2 of 2012 Vasagam ...
Petitioner/Petitioner/ 2nd Defendant Vs.

1. Jothi 2. Parameshwari ... Respondents/Respondents/ Plaintiffs Prayer Petition
filed under Article 227 of the Constitution of India, to set aside the order dated
18.02.2011 in I.A.No.16 of 2011 in O.S.No.53 of 2010, on the file of the Sub Court,
Aruppukkottai. !For Petitioner ... Mr.M.Ramu ^For Respondents ... Mr.S.Natarajan
* * * * * :ORDER This Civil Revision Petition has been filed to get set aside the
order dated 18.02.2011, passed in I.A.No.16 of 2011 in O.S.No.53 of 2010, by the
learned Subordinate Judge, Aruppukkottai.

2. Heard both sides.

3. The parties, for the sake of convenience, are referred to hereunder according to
their litigative status before the trial Court.

4. Compendiously and concisely, the relevant facts absolutely necessary and germane for the disposal of this Civil Revision Petition would run thus: The second defendant herein viz., Vasagam filed an application under Order VII Rule 11 of the Code of Civil Procedure for getting the plaint rejected, on the main ground that there was no cause of action disclosed in the plaint and the Court fees paid after valuing the suit was also erroneous. However, the plaintiffs viz., Jothi and Parameshwari, who are the respondents herein resisted the said application. After hearing both sides, the trial Court dismissed that application.

5. Being aggrieved by and dissatisfied with the order passed by the lower Court, the Civil Revision Petition has been focussed on various grounds.

6. The learned Counsel for the revision petitioner placing reliance on the grounds of the revision petition, would pyramid his arguments, which could pithily and precisely be set out thus: After the death of Periyakaruppa Thevar, the father of the plaintiffs and the defendants, his sons viz., the defendants 1 and 2 got the partition effected in respect of those properties, in the year 1977 itself. In fact, it was the second defendant, who spent money for solemnising the respective marriages of the plaintiffs. As such, absolutely there is no cause of action as found set out in the plaint. Over and above that, in as much as there was no joint possession, as a sequela, the valuation made in the plaint is obviously erroneous.

7. The point for consideration is as to whether there is any perversity or illegality in the conditional order passed by the trial Court? The Point:

8. I would like to recollect the following decision of the Honourable Apex Court in Ganduri Koteswaramma and another v. Chakiri Yanadi and another reported in (2011) 9 Supreme Court Cases 788.

9. A mere running of the eye over the said precedent, would reveal that virtually the Hindu Succession (Amendment) Act, 2005, is having retrospective effect and obviously, in this case, there is no registered partition also emerged between Poosaimani and Vasagan, after the death of Periyakaruppa Thevar. In such a case, a serious legal issue based on Hindu Law concept involved and that could not be brought within the narrow campus of Order VII Rule 11 of the Code of Civil

Procedure and the parties should go the whole hog in conducting trial and ultimately the Court has to render its decision. On the one hand, the plaintiffs would contend that they are in joint possession of the properties concerned; whereas the contesting the second defendant pleaded otherwise. This also has to be dealt with after entertaining full evidence both oral and documentary. The lower Court correctly analysed the matter and held that the serious issue relating to Hindu law cannot be dealt with under Order VII Rule 11 of the Code of Civil Procedure, wherefore no interference with the order is warranting in this Civil Revision Petition.

10. The learned Counsel for the revision petitioner would submit that items 1 to 3 of the suit properties are not the properties of Periyakaruppa Thevar himself, or the family properties. The plaintiffs also admitted that factual position, whereupon the trial Court also recorded the same. In such a case, there is no need to interfere with the order passed by the trial Court. The point is answered accordingly.

11. On balance, this Civil Revision Petition is dismissed. Consequently the connected miscellaneous petition is dismissed. No costs.

12. The learned Counsel for the revision petitioner would make an extempore submission that a time limit may be fixed for the early disposal of the matter. Hence, I would like to mandate the lower Court that the matter should be disposed of within a period of four months from the date of receipt of a copy of this order. ssl
To The Court of Subordinate Judge, Aruppukottai.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com