

Krishnakumar Vs. V.Seethalakshmi

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Court : Chennai

Decided On : Jan-07-2013

Judge : R.S.Ramanathan

Appellant : Krishnakumar

Respondent : V.Seethalakshmi

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

07. 01.2013 CORAM The Hon'ble Mr.Justice R.S.Ramanathan Civil Revision Petition.(PD)No.28 of 2013 and M.P.No.1 o

1. Krishnakumar 2.Vijayalakshmi 3.Jayalaskhmi 4.Usharani 5.Deepa 6.Kavitha .. Revision Petitioners Vs. 1.V.Seethalakshmi 2.G.Narayana Asariswamy 3.G.Senthilkumar .. Respondents Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order, dated 30.08.2012, passed in I.A.No.44 4 of 2012, in O.SNo.36 of 2010, on the file of the IV Additional District and Sessions Judge (FTC.not II) Coimbatore. For Revision Petitioners : Mr.K.S.Karthik Raja O R D E R The defendants are the revision petitioner herein.

2. The respondents/plaintiffs filed the suit for the relief of partition of the suit property. In that suit, the revision petitioners/defendants filed a written statement, stating that one Mr.Narayana Asari, who was the original owner of the suit property, did not die intestate, as claimed by the plaintiffs and he executed a Will

dated 30.03.1991, in favour of the defendants' father, by name Subramaniam and after the father's death, (viz., Subramaniam) the defendants and other legal heirs succeeded to the estate. Therefore, the plaintiffs have no right over the property. Hence, a memo was filed by the plaintiffs before the Court below and sought for a direction, directing the revision petitioner/defendants to begin the case, as they have claimed right over the property under the Will and that application was allowed. Thereafter, the revision petitioners filed a Review Application to review the said order, stating that no opportunity was given to the plaintiffs and that Review Application was dismissed. Aggrieved by the same, the present Civil Revision Petition is filed.

3. The learned counsel appearing for the revision petitioners submitted that the Court below, without properly appreciating the provisions of Order 18, Rule 1 of C.P.C., erred in directing the revision petitioners to begin the case. The learned counsel submitted that as per Order 18, Rule 1, unless, the defendant admits the fact, alleged by the plaintiff in the plaint and also contends that either on point of law or on some additional facts, alleged by the defendant, the plaintiff is not entitled to any part of the relief, which he seeks, in that case, the defendant has right to begin the case. The learned counsel submitted that in the present case, the revision petitioners/ defendants did not admit the case of the plaintiffs and they denied the allegations made in the plaint, in detail, in their written statement. Therefore, when the defendants did not admit the allegations made in the plaint, the first condition was not satisfied and in that case, the Court below ought not to have directed the defendants to let in evidence first. The learned counsel further submitted that there is difference between burden of proof and onus of proof. Burden of proof lies on the party, who asserts a particular fact and onus of proof by a party would cease, the moment, the opposite party admits the transaction. In this case, burden of proof is on the plaintiffs to prove their case and that cannot be shifted to the defendants and in support of his contention, the learned counsel relied upon the judgment of the Hon'ble Supreme Court reported in (2010) 5 L.W. 454 in [Bajaj Auto Ltd., Vs. TVS Motor Company Ltd.,] and submitted that the order of the Court below in dismissing the Review Application is liable to be set aside.

4. This Civil Revision Petition is against the order, dismissing the Review Application filed by the revision petitioners. Therefore, the scope of this Civil Revision Petition is limited and this Court cannot exercise power conferred under Article 227 of the Constitution of India, while appreciating the judgment rendered in Review Application.

5. Admittedly, based on the memo filed by the plaintiffs, order was passed, directing the revision petitioners to lead evidence first. And, that order was not challenged and only Review Application was filed. It is a settled principle of law that Review lies, only when there is an error apparent on the face of record and in the absence of any plea that there was error apparent on the face of record, by directing the revision petitioners to lead evidence, there is no need to entertain the Review Application.

6. It is seen from the plaint that the properties originally belonged to one Narayana Asari and he died on 29.10.1992, leaving behind his two sons, viz., Subramaniam and Govindarajan and one daughter, by name Villasini. The said Govindarajan died on 8.5.2005, leaving behind his wife/first plaintiff and two sons, viz., plaintiffs 2 and 3 and one daughter-Heenambika. The another son of the said Narayana Asari, by name, Subramaniam died, leaving behind the defendants 1 to 6 as his legal heirs. It is further stated that the said Narayana Asari died intestate and therefore, each of his children are entitled to 1/3rd share in the suit property and the daughter Heenambika, released her 1/3rd share in favour of the plaintiffs under a registered sale deed, dated 01.08.2005 and therefore, the plaintiffs are entitled to 2/3rd share and the defendants are entitled to 1/3rd share. In the written statement, the defendants admitted the fact that the properties belonged to Narayana Asari, but, denied the allegations that the said Narayana Asari, died intestate. The defendants also denied the allegations that the daughter of Narayana Asari, executed a released deed in favour of the plaintiffs and contended that Narayana Asari executed a Will, dated 30.03.1991, in favour of his son Subramaniam and therefore, the said Subramaniam became the absolute owner of the property and after his death, the defendants are the absolute owner of the property. Therefore, the plaintiffs and the defendants admitted the fact that the properties, originally, belonged to Narayana Asari and according to the

plaintiffs, Narayana Asari died intestate, leaving behind his two sons and one daughter and they are entitled to 1/3rd each and the daughter executed a release deed, relinquishing her 1/3rd share in favour of the plaintiffs' father and therefore, they are entitled to 2/3rd.

7. The case of the defendants is that, Narayana Asari did not die intestate and he executed a Will in favour of his son Subramaniam, viz., the father of the defendants. Therefore, as per the provisions of Order 18, Rule 1 of C.P.C., both the parties, viz., the plaintiffs and the defendants admitted the fact that the properties belonged to Narayana Asari and this fact has to be taken into consideration and the other denial, regarding the succession to the property cannot be taken into consideration to decide whether the defendants are admitting the case of the plaintiffs are not. If the arguments of the learned counsel for the revision petitioners is to be accepted, for attracting the provisions of Order 18, Rule 1, that the defendants ought to have admitted the facts, alleged in the plaint, then, there is no need for any trial and the Court can straightway pass a decree. What the order requires is, whether the defendants admitted the basis of the claim of the plaintiffs. In this case, the basis of the claim of the plaintiffs is that the property belonged to Narayana Asari. That fact admitted by the defendants. If the defendants claimed that the property did not belong to Narayana Asari or Narayana Asari has no absolute estate over the property, in that case, it cannot be stated that the defendants have admitted the case of the plaintiffs. Therefore, having admitted the fact that the property belongs to Narayana Asari, the first condition, as stated in Order 18, Rule 1 has been satisfied and when the defendants pleaded right over the property, under the Will, they will have to prove the Will. Therefore, the Court below has rightly directed the defendants to lead evidence, in the first instance. In the judgment rendered in [Bajaj Auto Ltd., Vs. TVS Motor Company Ltd., referred to supra, it has been held by the Hon'ble Division Bench of this Court in para No.34, which reads thus:- "Burden of proof vis-a-vis onus of proof:- Burden of proof generally lies on a party, who asserts a particular fact. In other words, it would be on a party, whose suit would fail, if no evidence was let in. onus of proof by a party would cease the moment opposite party admits the transaction. Burden of proof on the pleadings of a party, never shifts to the other party. The initial burden of proving a particular fact is always on

the party who asserts it. When he produces evidence in support of his statement, onus would shift on the opposite party to adduce rebutting evidence to meet the case made out by the other party. In civil cases, onus of proof is never fixed permanently, but it would fluctuate very frequently. " 8. In this case too, the burden of proof lies on the party, who asserts a particular fact. The particular fact, which is asserted is, whether the property belonged to Narayana Asari absolutely. That fact has been asserted by the plaintiffs and also admitted by the defendants. Therefore, there is no burden of proof on the plaintiffs to prove that fact. Insofar as the onus of proof is concerned, it is held in that judgment, referred to above, that onus of proof by a party would cease, the moment, the opposite party admits the transaction. In this case, the onus of proof is on the defendants to prove the execution of the Will, that has been denied by the plaintiffs. Once defendants are able to prove the Will to the satisfaction of the court, the suit filed by the plaintiffs will be dismissed and there is no necessity to go into the further aspects of the matter, by letting evidence by the plaintiffs. Considering all these aspects, the Court below initially directed the defendants to lead evidence first and that was properly appreciated, while considering the Review Application. Further, I do not find any infirmity in the order passed by the Court below in the Review Application and there is no error apparent on the face of record to interfere with the same.

9. In the result, the Civil Revision Petition fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. sd To The IV Additional District and Sessions Judge, (FTC.not II) Coimbatore

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