

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE
VIRUDHUNAGAR**

Present : Thiru. **T.V.Hemanandakumar, B.A.,L.L.M.,**
Additional District Judge, Virudhunagar

Saturday, the 2nd day of September, 2023

IA No.4/2023 in OS.No.51/2021 (CF No.4/2023)

- 1) G.Uma
- 2) G.Ananthi
- 3) G.Sivamuthu

... Petitioners/Defendants 2 to 4

Vs

- 1) G.Muthumari
- 2) Manoharan
- 3) The Sub-Registrar, Sivakasi
- 4) The Tahsildar, Sivakasi

... 1st Respondent/Plaintiff/
Respondents 2 to 4/Defendants 5
to 7

This petition came up on 29.08.2023 for final hearing before me in the presence of Thiru.M.Muthukrishnan, Learned advocate for the petitioners, Thiru.N.Rajah Chandrasekaran and Thiru.SM.Ramasiva, Learned advocates for the 1st respondent, Thiru.S.V.Nagarajan, Learned advocate for the 2nd respondent, the respondents 3 & 4 remained exparte and upon considering all material records in this case and hearing on both sides and having stood over till this day for consideration and this court doth deliver the following

ORDER

Petition filed under Order 6 Rule 17 and Section 151 CPC praying to direct the 1st respondent/plaintiff to include the property bearing survey number 1545/1 having an extent of 3 acre 56 cents of Enjar village, in the suit.

2. The averments in the affidavit are as follows:

The petitioners herein are the defendants 2 to 4 in the suit. The petitioners and

1st respondent/plaintiff are brothers and sisters. The 1st respondent/plaintiff was given in marriage by giving dowry and household articles. Even after that parents financially helped her. The plaint schedule property and the property scheduled in this petition are the self-acquired properties of petitioners' mother Ramanujammal. Knowing that the properties are self-acquired properties even at the lifetime of said Ramanujammal, the 1st respondent filed this suit for partition. By the mediation of prominent persons and relatives, a compromise was entered into between the parties and it was agreed that the mother Ramanujammal will execute a gift deed with respect to petition scheduled property in survey number 1545/1 having extent of 3 acre 56 cent and one of the scheduled properties in survey number 1545/2A having extent of 1 acre 94 cents totally 5 acre 50 cents and the 1st respondent/plaintiff agreed to withdraw the suit. The compromise memo was filed before the court and on 14.12.2015 gift deed was also executed by Ramanujammal. The remaining properties were settled in favour of these petitioners on 16.03.2016 and subsequently they sold that properties to third parties on 13.05.2016 and 19.05.2016. But, after the death of Ramanujammal, on 22.12.2015 only to get money from these petitioners, the 1st respondent is proceeding with the suit. The 1st respondent/plaintiff is enjoying 5 acre 50 cents of properties gifted to her and she has alienated some properties. The compromise and division of property has to be accepted that partition. Said partition was denied by the 1st respondent/plaintiff and so, petition scheduled property which is also a joint family property has to be included in the suit.

3. The 1st respondent/plaintiff filed counter contending that deceased Ramanujammal is the mother of this respondent. The petitioners had admitted that the scheduled properties are self-acquired properties of Ramanujammal. So, she has right to gift the self-acquired property. The other legal heirs could not object the same and son & daughters can be disinherited from the self-acquired properties. But, they still have equal rights over the ancestral or co-parcenary properties. Ramanujammal executed a settlement deed with respect to her self-acquired property by way of

registered document number 8621/2015 on 14.12.2015. The legal heir of Ramanujammal cannot object the above said settlement deed over the ownership of this respondent. Ramanujammal had also executed a settlement deed in favour of the 3rd petitioner through document number 6087/2015 dated 25.08.2015 and 8620/2015 dated 14.12.2015. The alleged compromise memo was taken up for hearing and it was closed by court as the matter was not settled. The burden of proof lies on the petitioners to establish the compromise memo. This respondent denying all the allegations in the petition and the petition has to be dismissed.

4. The 2nd respondent endorsed 'no counter' in this petition.
5. No evidence adduced and documents produced on both sides.
6. Heard both sides.
7. Whether this petition deserves to be allowed is the point for consideration.

8. Point:

The petitioners in this petition are the defendants 2 to 4 in the main suit. The 1st respondent Muthumari is the plaintiff in the suit. The petitioners and 1st respondent are the children of Ramanujammal (since deceased) who was the 1st defendant in the suit. The 1st respondent/plaintiff filed the suit stating that the suit properties are ancestral properties of Lakshmi who is the mother of 1st defendant. After her death her only legal heir 1st defendant and the plaintiff & defendants 2 to 4 inherited the properties and so 1st respondent/plaintiff claimed 1/4 share in the plaint schedule properties. The petitioners/defendants are contesting the suit stating that the scheduled properties are self-acquired properties of their mother Ramanujammal. During the pendency of the suit, the petitioners/defendants 2 to 4 filed this petition to include another property in survey number 1545/1 also in this case. It is the petitioners' case that all the properties are self-acquired properties of their mother and so, during the 1st defendant's lifetime, the 1st respondent/plaintiff had no right to file the suit for partition. But, in order to avoid litigation, the parties entered into a compromise and the 1st defendant/mother agreed to execute gift deed with respect to one of the plaint schedule properties and this petition scheduled property in favour of

the 1st respondent/plaintiff. The 1st respondent also agreed to withdraw the suit. Sequel to the compromise as agreed the 1st defendant/mother executed a gift deed in favour of the 1st respondent on 14.12.2015. By that gift deed, she transferred one of the plaint scheduled properties and the property now sought to be included survey number 1545/1 in favour of the 1st respondent. Immediately, after that Ramanujammal died on 22.12.2015. Taking advantage that fact, now the 1st respondent is continuing the suit without withdrawing the suit as agreed by her. So, in this case, above said survey number 1545/1 has to be included.

9. The petitioners' averment is that all the suit properties and the property now sought to be included are the self-acquired properties of 1st defendant Ramanujammal and only on the basis of compromise, she executed a gift deed. Admittedly, the 1st defendant/mother executed a gift deed on 14.12.2015 in favour of the 1st respondent with respect to survey number 1545/1. As per the case of petitioners, that property is also self-acquired property of Ramanujammal and so she is having every right to transfer the property by way of gift. So, after the death of mother, that property is not available for partition.

10. The question whether the above said gift deed was executed sequel to the compromise and whether after the gift the 1st respondent is having her share in the remaining properties is question of fact to be decided in trial. Now, it is the very case of petitioners that another property survey number 1545/1 owned by the mother is available for partition and it was not included in the suit. The 1st respondent/plaintiff opposed the petition stating that she is not willing to include the petition scheduled property in the suit. If such a property is available for partition and if it is not included in the suit, the plaintiff has to face the legal consequences of partial partition. Since, said Ramanujammal already executed a gift deed in favour of the 1st respondent/plaintiff, this petition scheduled property cannot be ordered to be included in this suit. Hence, this petition is without merits and has to be dismissed.

11. In the result, this petition is dismissed. No order as to costs.

Dictated to the steno-typist, typed by him, corrected and pronounced by me in open court, on this the 02nd day of September, 2023.

Additional District Judge,
Virudhunagar.

Witness and Exhibits on the side of the Petitioners:
Nil.

Witness and Exhibits on the side of the Respondents:
Nil.

Additional District Judge,
Virudhunagar.

Additional District Court
Virudhunagar
IA No.4/2023 in OS No.51/2021
ORDER
Dated: 02.09.2023
