

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(PD) NO.1424 OF 2015
AND M.P.NO.1 OF 2015

Kannappan @ Shanmugasundaram

... Petitioner

Vs.

1.P.Meenakshi
2.Sivagami

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 18.02.2015 passed in I.A.No.3 of 2015 in O.S.No.389 of 2013 by the learned III Additional Subordinate Judge, Erode.

For Petitioner : Mr.I.C.Vasudevan

ORDER

Heard the submissions made by Mr.I.C.Vasudevan, learned counsel for the petitioner and perused the materials available on record.

2.This Civil Revision Petition is directed against the order dated 18.02.2015 passed in I.A.No.3 of 2015 in O.S.No.389 of 2013 by the learned III Additional Subordinate Judge, Erode.

3.The petitioner is the first defendant in O.S.No.389 of 2013. The first respondent, who is the sister of the petitioner had instituted the suit against the petitioner and 2 others, for partition, separate possession and for other reliefs. The first respondent has averred in the plaint that after the death of her father in the year 1968, she has been in joint possession and enjoyment of the suit properties along with the defendants.

4.The petitioner filed an application in I.A.No.3 of 2015 under Order VII Rule 11(d) and Section 151 of the Civil Procedure Code for rejection of the plaint contending that the suit is barred by limitation, as the same was filed after 45 years of the death of the plaintiff's father. The application was opposed by the respondent by filing a counter affidavit. The Trial Court rejected the application observing that the legal heirs are deemed to be in joint possession and enjoyment of the undivided property, even one of the heirs is actually in possession of the undivided property. Aggrieved by the order, the present Civil Revision Petition is filed.

5.Mr.I.C.Vasudevan, learned counsel for the petitioner submitted that the suit filed is barred by limitation and it is an abuse of process of law and therefore, the plaint has to be rejected under Order VII Rule 11 of the Civil Procedure Code.

6.I do not agree with the contention of the learned counsel for the petitioner. It is settled law that all the legal heirs are deemed to be in joint possession and enjoyment of the properties. Further, the plaintiff has specifically stated that after the demise of her father, she was in joint possession and enjoyment of the properties along with the defendants. The contention raised by the petitioner cannot be decided under Order VII Rule 11 of the Civil Procedure Code and it can be decided only after full fledged trial. In my view, the Trial Court has rightly rejected the application, which does not warrant interference by this Court.

7.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.04.2015

Index : Yes/No

Internet : Yes/No
TK

K.KALYANASUNDARAM, J.
TK

To

The III Additional Subordinate Court
Erode.

C.R.P.(PD) NO.1424 OF 2015

01.04.2015