

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.02.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.279 of 2016
and C.M.P.No.1293 of 2016

Naveen

... Petitioner

Vs.

1.B.Sasikala

2.Lalitha

3.S.V.Jayaprakash

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 27.03.2015 in I.A.No.65 of 2015 in O.S.No.81 of 2005 on the file of the II Additional District Court, Salem.

For Petitioner : Mr.D.Shivakumaran
for Mr.V.Sekar

ORDER

The third defendant in the original suit filed by the 1st respondent herein for partition and separate possession is the petitioner in the Civil Revision Petition. The respondents 2 and 3 in the Civil Revision Petition are defendants 1 and 2 in the original suit. The third defendant, who is the petitioner in the Civil Revision Petition is none other than the son of the second defendant [third respondent in the Civil Revision Petition]. The defendants 1 and 2 filed written statements, in which, no defence under the erstwhile Section 23 of the Hindu Succession Act, 1956, came to be taken. Subsequently, on the impleadment of the third defendant, who is the petitioner in the Civil Revision Petition, he filed an additional written statement only on 23.02.2015, in which alone he took a stand that since the suit properties are dwelling houses, till the male members decide to divide them, the female sharers

or anyone claiming through female sharers cannot seek partition of the dwelling houses. Besides taking such a plea of defence in the written statement, the petitioner herein/third defendant also filed a petition in I.A.No.65 of 2015 under Order VII Rule 11 of C.P.C. praying for the rejection of the plaint, on the above said ground. The learned trial judge after hearing, dismissed the said application by an order dated 27.03.2015. As against the said order, the present Civil Revision Petition has been filed under Article 227 of the Constitution of India. The matter stands listed today 'for admission'.

2. Heard Mr.D.Shivakumaran, learned Advocate appearing for Mr.V.Sekar, learned counsel on record for the petitioner.

3. The grounds of revision, copy of the impugned order of the trial court and the copies of the pleadings and other documents produced in the form of typed set of papers are also perused.

4. The petition filed by the revision petitioner before the trial court under Order VII Rule 11 of C.P.C. is liable to be thrown out, on the threshold itself on two grounds. First of all, even before the amendment made by Act 39 of 2005, deleting Section 23 of Hindu Succession Act, 1956, w.e.f. 09.09.2005, the said provision did not prevent a suit being filed for partition, even in respect of a dwelling house and it was only a plea of defence available to the defendants that the male members had not taken a decision to effect a partition of that dwelling house. As a corollary to the same, the erstwhile Section 23 which was repealed by Act 39 of 2005 applied in respect of only one dwelling house and not multiple

dwelling houses owned by the family members. Here in the case, there are two items of properties, both are stated to be dwelling houses. Hence, the contention that the first respondent/plaintiff could not seek partition of both the dwelling houses was against the spirit of the erstwhile Section 23 of the Hindu Succession Act, 1956. Again to attract the erstwhile Section 23 of the Hindu Succession Act, 1956, the dwelling houses should be in the occupation of the family members. Otherwise such defence will not be available. On that score also, the petition filed under Order VII Rule 11 of C.P.C. was bound to be dismissed.

5. The second ground is that even if it is assumed that there was a dwelling house in the occupation of the members of the family, the defence that no partition could be claimed of the dwelling house in the occupation of the family members is no longer available from 09.09.2005. Hence, the choice made by the revision petitioner to file a petition in 2015 under Order VII Rule 11 C.P.C. for the rejection of the plaint is totally on a misconception. Hence, this Court comes to the conclusion that there is no error or defect in the order passed by the trial court dismissing the application filed by the petitioner under Order VII Rule 11 of C.P.C. The revision does not even merit admission and on the other hand, it deserves to be dismissed at the threshold.

In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

09.02.2016

Index : Yes
Internet : Yes
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P.R.SHIVAKUMAR, J.

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To
The II Additional District Judge,
Salem.

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