

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-01-2016

(Orders reserved on 17.12.2015)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

C.R.P.(PD).No.2153 of 2013
& M.P.No.1 of 2013

Thakira Banu

.. Petitioner

Vs.

1. Sheik Abdulla

2. Jubaida Beevi

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 06.03.2013 in I.A.No.961 of 2012 in O.S.No.183 of 2011 on the file of the District Munsif Court, Perambalur.

For petitioner : Mr.V.Raghavachari

For respondents : Notice served. No appearance

ORDER

This Civil Revision Petition is filed against the order dated 06.03.2013 in I.A.No.961 of 2012 in O.S.No.183 of 2011 passed by the learned District Munsif, Perambalur, in and by which, the application filed by the revision petitioner/defendant for rejection of the plaint, was dismissed.

2. Learned counsel for the revision petitioner/defendant contended that the trial Court, without properly appreciating the averments made in the affidavit filed by the petitioner/defendant, dismissed the application. He further submitted that there is no cause of action for the respondents/plaintiffs to file the suit. He

further contended that the petitioner/defendant's grandmother sold a portion of the suit properties through the second plaintiff and suppressing the same, the suit was filed and it is a gross abuse of process of Court. He further contended that the averment of the plaintiffs that the defendants interfered with the suit properties, is false. He further stated that the suit is affected by suppression of material facts to the Court. The plaintiffs, utilising the guardian under the Will, illegally sold a portion of the suit properties to a third party and the plaintiffs suppressed the Will and the sale deed. He further contended that the averments alleged in the plaint are false and the plaint has to be rejected under Order 7 Rule 11 CPC. The trial Court erroneously dismissed the application and he prayed that the Civil Revision Petition may be allowed.

3. Though the respondents have been served with notice and their names have also been printed in the cause list, there is no representation for the respondents.

4. Heard the learned counsel for the petitioner/defendant and perused the materials available on record.

5. On a reading of the entire plaint, copy of which is filed in the typed set of papers and also on perusing the grounds stated in the Civil Revision Petition, it is seen that the second respondent as guardian of the petitioner herein, sold suit item-1 to Savithri on 30.09.1996 and in the sale deed, it is stated that the property belonged to the petitioner herein/defendant, through Will, which is dated 07.09.1992. It is further stated that the purchaser constructed a three-

storied building in that property and is enjoying it and the petitioner/defendant is in enjoyment of suit item-2. It is also stated by the petitioner/defendant that there is no cause of action for the plaintiffs to file the suit. It is further stated that suppressing the sale through the second plaintiff, the suit had been filed, which is gross abuse of process of Court. It is also alleged that when the second plaintiff had sold the property as guardian of the petitioner by relying upon the Will, the averment that the defendant interfered in the suit properties, is false. The revision petitioner/defendant further alleged that the plaintiffs suppressed the material facts of partition effected between the parties and the Will executed by Amina Be and further, relying upon the Will, the second plaintiff illegally sold item-1 of the suit properties to the said Savithri in the capacity of the petitioner's guardian, and therefore, the suit is affected by suppression of material facts to the Court. It is further alleged that suppression of the Will and the sale deed, is nothing but abuse of process of Court and the plaint does not disclose the cause of action for filing the suit, and as such, the revision petitioner/defendant prays that the plaint is liable to be rejected.

6. The entire allegations made for rejecting the plaint, are mixed questions of fact and law. The trial has not yet commenced and the evidence is yet to be adduced by the parties to the suit. The allegations made by the defendant to reject the plaint, have to be proved by oral and documentary evidence. Hence, the arguments of the learned counsel for the petitioner/defendant for rejection of the plaint, are not acceptable and the

allegations do not come under the purview of Order 7 Rule 11 CPC to reject the plaint at this stage. Hence, this Court, without giving any finding to the above allegations, is of the considered view that the plaint cannot be rejected at this stage. There is no illegality or infirmity in the impugned order of the trial Court and the same does not warrant interference by this Court.

7. Hence, the Civil Revision Petition is liable to be dismissed and the same is dismissed. No costs. The Miscellaneous Petition is closed.

05-01-2016

Index: Yes/no
Internet: Yes/no

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Copy to
The District Munsif, Perambalur.

G.CHOCKALINGAM, J

CS

Order

in

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