

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **24.10.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.3289 of 2016 and
C.M.P.No.16758 of 2016

Rajavel

...Petitioner

versus

1.Janaki Rani
2.Janaki Kumari

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 02.06.2016 made in I.A.No.528 of 2015 in O.S.No.426 of 2014 on the file of III Additional District and Sessions Judge, Coimbatore.

For Petitioner : Mr.T.Dhanasekaran

ORDER

The respondents filed a suit for partition before the learned III Additional District and Sessions Court at Coimbatore. In the said suit, the petitioner, in his capacity as 3rd defendant filed an application in I.A.No.528 of 2015 invoking Order VII Rule 11 of the Code of Civil Procedure. The application was dismissed by the Trial Court. Feeling aggrieved, the petitioner has come up with this Civil Revision Petition.

2. The learned counsel for the petitioner contended that the predecessor-in-interest of the respondents earlier filed a suit in O.S.No.1047 of 1996. The said suit was dismissed for default. The subsequent suit is one for partition. The respondents have not disclosed the factum of dismissal of the earlier suit in O.S.No.1047 of 1996 and as such, the subsequent suit is barred.

3. There is no dispute that the predecessor-in-interest of the respondents earlier filed a suit in O.S.No.1047 of 1996, praying for a decree of permanent injunction. According to the petitioner, the said suit was dismissed for default. The predecessor-in-interest of the respondents placed reliance on the Will dated 19.06.1995 in the earlier suit. The plaint filed by the legal representatives of the plaintiff in O.S.No.1047 of 1996 does not contain any statement with regard to the Will. The alleged suppression of the Will in the subsequent plaint is taken as a reason by the petitioner to support his claim that the subsequent suit should be axed at the threshold, by invoking Order VII Rule 11 of CPC. I am not in a position to agree with the contention taken by the petitioner for more than one reason.

4. The earlier suit was a simple suit for injunction. The plaintiff in the said suit placed reliance on a Will. Even if the said suit was dismissed for default, the subsequent suit filed by the legal representatives for partition is not barred. The question as to whether the respondents are entitled to a preliminary decree for partition is essentially an issue to be decided on the basis of the plaint averments and the documents filed by the parties. There is no question of rejecting the subsequent suit at the threshold on the sole ground that the Will relied on in the earlier suit has not been taken as a ground to claim partition in the subsequent suit. I am therefore of the view that the learned Trial Judge was fully justified in dismissing the application in I.A.No.528 of 2015. I do not find any error or illegality in the order warranting interference by exercising the revisional jurisdiction under Article 227 of the Constitution of India.

5. In the up shot, I dismiss the Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is closed.

24.10.2016

Index:Yes/No
svki

K.K.SASIDHARAN, J.

(svki)

To

The III Additional District and Sessions Court, Coimbatore.

C.R.P.(P.D.) No.3289 of 2016

24.10.2016