



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.2571 of 2016 (PD)

and

C.M.P(MD)No.12101 of 2016

Gopikannan

.. Revision Petitioner/Petitioner/
3rd Defendant

Vs.

Annathai @ Annathayammal

..Respondent/Respondent/Plaintiff

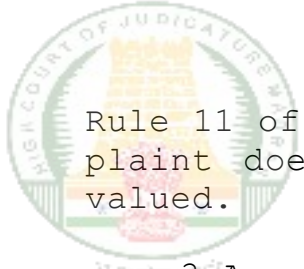
PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, praying to set aside the order and decreetal order, dated 20.09.2016 in I.A.No.320 of 2015 in O.S.No.122 of 2014, on the file of the Sub Court, Aruppukottai and allow this Civil Revision Petition with costs.

For Petitioner : Mr.R.Rajaraman

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decreetal order, dated 20.09.2016 passed in in I.A.No.320 of 2015 in O.S.No.122 of 2014 by the Sub Judge, Aruppukottai.

2.The petitioner is the third defendant in the suit in O.S.No.122 of 2014. The respondent, who is the plaintiff, filed a suit in O.S.No.122 of 2014 against the petitioner and defendants 1,2 & 4 claiming partition of the suit schedule property claiming 1/4th share. The petitioner along with other defendants filed written statement in the month of March, 2015. According to the respondent, she is the wife of Kili Naicker @ Chinna Alagarsamy Naicker @ M.C.Alagarsamy. The petitioner and defendants 1 and 2 are illegitimate children of Kili Naicker @ Chinna Alagarsamy Naicker @ M.C.Alagarsamy, who lived with fourth defendant. According to the respondent, she is the legally wedded wife and therefore, she is entitled to 1/4th share in the suit schedule property. The petitioner filed I.A.No.320 of 2015 under Order 7



Rule 11 of C.P.C., for rejection of plaint on the ground that the plaint does not disclose any cause of action and suit is under valued.

3. According to the petitioner, the respondent is a stranger to the family and she is not the wife of his father. The value of the property mentioned in the plaint is more than 1 crore and the respondent has not paid proper Court fee. The respondent filed counter affidavit and reiterated the averments mentioned in the plaint.

4. The learned Judge considering the averments made in the affidavit and counter affidavit and all the materials available on record, dismissed the application holding that the value of the property can be determined only after evidence let in by both parties.

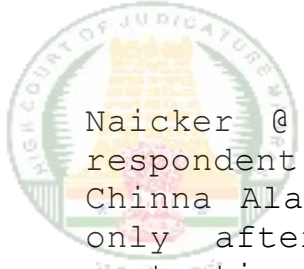
5. Against the said order of dismissal, the petitioner has filed the present Civil Revision Petition.

6. The learned counsel appearing for the petitioner submitted that the petitioner sought for rejection of plaint on two grounds that plaint does not disclose any cause of action and suit is under valued. The learned Judge failed to consider the plea that in the plaint does not disclose any cause of action. The fourth respondent, the mother of the petitioner alone is the wife of the Kili Naicker @ Chinna Alagarsamy Naicker @ M.C. Alagarsamy. The respondent is the stranger to the family. The learned Judge failed to consider the fact that the respondent was not living with petitioner's father for the past 40 years. The attempt made by the respondent to be included as legal heirs of Kili Naicker @ Chinna Alagarsamy Naicker @ M.C. Alagarsamy, was rejected by the Revenue Authorities and the respondent has not challenged the same. Therefore, the said proceeding has become final. The petitioner's father by the registered Will, dated 25.01.2015 bequeathed all the properties to the petitioner and defendants 1, 2 & 4. The respondent knowing fully well about the Will, filed the suit.

7. I have heard the learned counsel appearing for the petitioner and also perused the entire materials on record.

8. A plaint can be rejected under Order 7 Rule 11 of C.P.C., for the reasons stated therein. It is well settled that the Court while considering the petition for rejection of plaint has to consider only the averments made in the plaint. The contention of the defendant in the written statement or in the application of rejection of plaint cannot be taken into consideration. In the present case, the respondent has stated that she is legally wedded

to deceased Kili Naicker @ Chinna Alagarsamy Naicker @ M.C. Alagarsamy. The petitioner, defendants 1, 2 are the illegitimate children of deceased Kili Naicker @ Chinna Alagarsamy



Naicker @ M.C.Alagarsamy through fourth defendant. Whether the respondent is legally wedded wife of deceased Kili Naicker @ Chinna Alagarsamy Naicker @ M.C.Alagarsamy or not can be decided only after the parties let in evidence in the trial. The contention of the petitioner is that the respondent is not the wife of the deceased Kili Naicker @ Chinna Alagarsamy Naicker @ M.C.Alagarsamy and she is totally stranger to the family, cannot be considered at this stage for rejection of plaint. As far as valuation of the property of the suit is concerned, the learned Judge has given cogent and valid reason for rejection of the contention of the petitioner. The suit is at the stage of framing issues. The learned Judge rightly held that necessary issues can be raised by way of evidence and can be decided after considering the evidence let in by the parties.

9.In the result, the Civil Revision Petition is devoid of merits and there is no illegality or irregularity warranting interference by this Court and hence, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To
The Sub Court,
Aruppukottai.

+1 cc to MR.R.RAJARAMANI, Advocate SR.No.82180

C.R.P (MD) No.2571 of 2016 (PD)
20.12.2016

SMA/GSV-SV/12.01.2017:3P/3C