

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1772 of 2017
& C.M.P.No.8327 of 2017

1. Dhanalachoumy
2. Tirouvengadame
Petitioners

..

Vs.

1. Balaraman
2. Sundarameenatchi @ Meenatchi
3. Karpagam

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 18.01.2017 passed in I.A.No.224 of 2016 in O.S.No.744 of 2015 on the file of the learned II Additional District Munsif, Puducherry.

For Petitioner : Mr.M.Shahjahan

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 18.01.2017 passed in I.A.No.224 of 2016 in O.S.No.744 of 2015 on the file of the learned II Additional District

Munsif, Puducherry.

2. The petitioners are the defendants 1 & 2. The respondents are the plaintiffs in O.S.No.744 of 2015. The respondents filed the suit for declaration to declare that the respondents 1 to 3 and the petitioners 1 and 2 are the only legal heirs of their deceased parent, Sabapathi, S/o.Sadaya Cavundar and Sivagami W/o Sabapathi, died on 19.3.1976 and 19.11.1999 at Kalmandabam respectively. The petitioners have filed written statement on 03.08.2015 and are contesting the suit.

3. The petitioners filed I.A.No.224 of 2016 under Order 7 Rule 11(1) CPC to reject the plaint on the ground that the respondents are not the legal heirs of the deceased parent, Sabapathi and Sivagami and the petitioners are only the legal heirs of the said deceased parents Sivagami and Sabapathi and already they filed O.S.No.543 of 2014 for declaring them as legal heirs of deceased Sabapathi and Sivagami and obtained decree on 09.06.2014 on the file of II Additional District Munisif Court, Puducherry. In the suit, the petitioners have filed their respective birth certificates and respondents have not filed any single document, especially birth certificate. They have suppressed the material facts and are trying

to mislead the court.

4. The respondents filed counter and submitted that the decree in O.S.No.543 of 2014 was obtained by the petitioners fraudulently. The respondents are also the legal heirs of the deceased mother Sivagami and Sabapathi. The petitioners have obtained the said decree in order to grab the properties of the deceased mother.

5. The learned Judge, considering the averments made in the affidavit, counter affidavit, materials available on record dismissed the application holding that the averments in the plaint and documents filed along with the plaint alone will be taken into consideration while deciding the application for rejection of the plaint filed under Order 7 Rule 11(1) CPC.

6. Against the said order of dismissal dated 18.01.2017, made in IA No.224 of 2016, the present civil revision petition is filed by the petitioners.

7. Heard the learned counsel for the petitioners and perused the materials available on record.

8. The application filed by the petitioners is to reject the plaint under Order 7 Rule 11 (1) C.P.C. It is well settled that in an application filed under Order 7 Rule 11 C.P.C., while deciding the said application to reject the plaint, only the averments made in the plaint and documents filed along with plaint have to be considered. In the present case, the learned Judge has considered the averments made in the plaint discloses the cause of action. Further, the learned Judge has also took note of fact that the petitioners have repeated the averments made in the written statement in the affidavit filed in support of the present application filed under Order 7 Rule 11 CPC. Based on the averments in the plaint and written statement necessary issues were framed.

9. In view of the above facts, from the materials available on record, it is seen that whether the respondents and petitioners are the legal heirs of the deceased Sabapathi and Sivagami, or not, has to be decided only after appreciating the evidence let in by both the parties.

10. The learned Judge, considering all the materials available

on record, dismissed the application by giving cogent and valid reasons. In these circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 18.01.2017.

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

19.06.2017

Speaking Order/Non-speaking Order

Index :Yes/No

Internet: Yes/No

jv/av

To

The II Additional District Munsif,
Puducherry.

V.M.VELUMANI, J.

jv/av

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