

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.1904 of 2017
& C.M.P.No.9197 of 2017

S.Muthazhagiri

.. Petitioner

Vs.

Balakrishnan

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 27.02.2017 made in I.A.No.175 of 2016 in O.S.No.28 of 2016 on the file of the District Munsif Court, Thiruthuraipoondi.

For Petitioner : Mr.D.Ashok kumar

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 27.02.2017 made in I.A.No.175 of 2016 in O.S.No.28 of 2016 on the file of the District Munsif Court, Thiruthuraipoondi.

2. The petitioner is the defendant and respondent is the plaintiff in O.S.No.28 of 2016. The respondent filed the suit for declaration to declare that the respondent has half share in the suit property. The petitioner, who is father of the respondent, filed written statement and is contesting the suit. The petitioner filed I.A.No.175 of 2016 under Order VII Rule 11 of CPC to reject the plaint on the ground that on 23.01.1971, a partition has been effected. The petitioner and the respondent were given separate property except house property at Vada Sangenthi Village, Thiruthuraipoondi Town and Taluk, Tiruvarur District. In the partition deed, it has been agreed and stated that if any property is left out and not included in the partition deed and subsequently, came to the knowledge, the same will be enjoyed by the petitioner. The respondent has suppressed this fact and filed the suit. The respondent has not valued the suit property properly and the Court fee paid by the respondent is not correct.

3. The respondent filed the counter affidavit and opposed the said application.

4. The learned Judge, considering the averments made in the affidavit, counter affidavit and averments made in the plaint, dismissed the application holding that the contents of the partition deed marked by the petitioner can be decided only after the evidence let in by the parties.

5. Against the order of dismissal dated 27.02.2017 made in I.A.No.175 of 2016, the present civil revision Petition is filed by the petitioner/defendant.

6. Heard the learned counsel for the petitioner and perused the materials available on record.

7. A plaint can be rejected only if the ingredients mentioned in Order VII Rule 11 of CPC are fulfilled and while considering this fact, averments made in the plaint alone are necessary. The written statement and any other documents relied on by the defendant to reject the plaint cannot be taken into consideration at this stage.

8. Considering the averments made in the affidavit, counter affidavit and grounds of Civil Revision Petition, I hold that the

petitioner has not made out any case for rejection of the plaint. The present Civil Revision Petition is liable to be dismissed as devoid of merits.

9. In the result, the Civil Revision Petition is dismissed. The learned District Munsif, Thiruthuraipoondi, is directed to dispose of the suit in O.S.No.28 of 2016, as expeditiously as possible, in any event, not later than nine months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

19.06.2017

Index : Yes/No

dh/kj

To
The District Munsif Court
Thiruthuraipoondi.

V.M.VELUMANI, J.

dh/kj

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