

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2017

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.PD.No.3921 of 2017
and C.M.P.No.18327 of 2017

1. G.Subburaman
2. G.Saravanan
3. S.Balamurugan
4. S.Kumar
5. S.Karthik
6. Thavaudu ammal @ Mookkammal
7. Kasthuri Ammal

..Petitioners

Vs.

- 1.Mariammal
- 2.S.Kamu
- 3.R.Jayanthi
- 4.S.Sundari
- 5.Parimala

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decretal order in I.A.No.939 of 2016 in O.S.No.226 of 2015 dated 28.03.2017 passed by II Additional District Court, Thiruvallur at Poonamallee.

For Petitioners : Mr.V.S.Sangar Ganesh

ORDER

According to the petitioner, the respondents 1 to 5 have

filed a suit in O.S.No.226 of 2015 before the Second Additional District Court, Tiruvallur at Poonamallee. The petitioners 1 to 7 herein, who are defendants in the said suit filed their written statement with an application in I.A.No.939 of 2016 for rejection of plaint under Order 7 Rule 11 of the Civil Procedure Code stating that the said suit is barred by limitation and further contended that a suit in O.S.No.191 of 2003 has been filed before the Sub Court, Poonamallee wherein respondents are arrayed as defendants 8 to 12. Therefore, the aforesaid suit is barred by Res judicata. However, the court below without appreciating the case of the petitioners / defendants, has erroneously dismissed the said application. Therefore, the petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the petitioners / defendants would submit that the application has been filed under Order 7 Rule 11 of the Civil Procedure Code for rejection of plaint. The Order 7 Rule 11 of the Civil Procedure Code is extracted as follows.

"Rejection of plaint – The plaint shall be rejected in the following cases:-

a) where it does not disclose a cause of

action.

b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

d) where the suit appears from the statement in the plaint to be barred by any law.

(Provided that the time fixed by the Court for the correction of the valuation or supplying the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would

cause grave injustice to the plaintiff).”

3. The learned counsel for the petitioners would submit in the light of the aforesaid provisions, the said suit is barred by limitation.

4. On perusal of the affidavit filed by the petitioner in support of the petition shows that the registered Will was executed on 18.10.1999 and also the suit has been filed in O.S.No.191 of 2003 for specific performance against the respondents and others. Hence, the said suit is barred by limitation and hit by the principle of Resjudicata. By considering the averments in the affidavit filed in support of the petition, it is the specific case of the petitioners that the respondents have suppressed the fact about the registered Will dated 18.10.1999 and had the knowledge of the said Will. Therefore, the suit is barred by limitation. Further contended that already suit in O.S.No.191 of 2003 has been filed against the respondents herein and others before the Sub-Court, Poonamallee. The present suit filed by the respondents herein falls under the doctrine of Res judicata. Counter statement filed by the respondents would shows that the respondents are disputed the said fact and specifically denied that there is no knowledge about

the registered Will.

5. It is useful to extract the decision rendered by the Hon'ble Supreme Court in the case of ***Kamala and Others Vs. K.T.Eshwara Sa and Others*** reported in ***(2008) 12 SCC 661***, wherein it is held as follows:

8. After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11 (d) CPC and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time. The findings recorded by the High Court touching upon the merits of the dispute are set aside but the conclusion arrived at by the High Court is

affirmed. We agree with the view taken by the trial court that a plaint cannot be rejected under Order 7 Rule 11 (d) of the Code of Civil Procedure.

6. In the light of the decision cited supra, in a suit for partition, the issue raised by the parties is mixed question of law, the same shall be considered at the time of trial. As far as the Res judicata is concerned, it is for the petitioner to establish before the trial court at the time of trial in the suit. Therefore, there is no error or illegality in the order passed by the court below.

7. In view of the facts and circumstances of the case, the order passed by the court below is confirmed. Accordingly, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

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Speaking/Non-speaking order
Index : Yes/No
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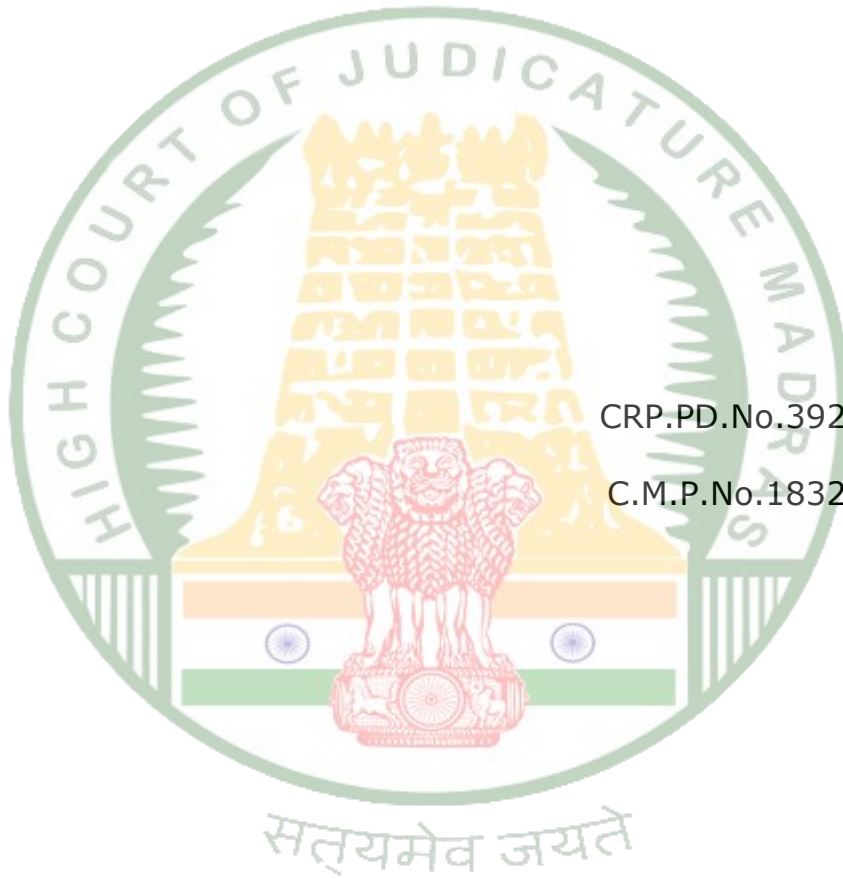
The II Additional District Court,
Thiruvallur at Poonamallee.



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D.KRISHNAKUMAR. J,

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