

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2910 of 2015
and MP.No.1 of 2015

N. Nandhakumar

.. Petitioner

Vs.

1. N. Poovathal,
2. N. Vijayalakshmi,
3. S. Balasubramaniam

.. Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order made in I.A.No.439 of 2014, in O.S.No. 47 of 2012, dated 20.3.2015, on the file of the Principal District Judge, Tiruppur.

For Petitioner : Mr. C. Veera Raghavan

For RR 1 & 2 : Mr.M.Easan

ORDER

The Civil Revision Petition has been filed against the fair and decretal order made in I.A.No.439 of 2014, in O.S.No. 47 of 2012, dated 20.3.2015, on the file of the Principal District Judge,

Tiruppur.

2. The petitioner is the 1st defendant and respondents 1 and 2 are the plaintiffs. The 3rd respondent is the 2nd defendant in OS.No.47 of 2012 on the file of the Principal District Judge at Coimbatore. The respondents 1 and 2 filed the suit for partition and separate possession of the suit property.

3. The petitioner has filed IA No.439 of 2014 under order VII Rule 11 of C.P.C. to reject the plaint. According to the petitioner, the suit filed by the respondents 1 and 2 does not disclose any cause of action as no averments are made out against the petitioner and the suit is filed based on the fabricated documents. The respondents 1 and 2 filed counter affidavit and opposed the said application and submitted that all the properties were purchased through self earning of one Natarajan, who is the husband of 1st respondent, father of the 2nd respondent and brother of 3rd respondent, and the petitioner. After the death of the said Natarajan, the respondents 1 and 2 sought for partition with their elders and the 3rd respondent and petitioner were evading partition. While so, the respondents 1 and 2 received notice for probate in OP. No.235 of 2012 on the file of Principal District Judge,

Coimbatore, filed by the petitioner and they came to know that the petitioner has fabricated the Will and he is claiming the suit property based on the Will. In the circumstances, the respondents 1 and 2 filed the suit for partition.

4. The learned Judge, considering the averments in the plaint, affidavit counter affidavit came to the conclusion that respondents 1 and 2 are claiming for partition after they received notice in probate petition in OP.No.235 of 2012 and whether they are entitled to partition or not, and whether the Will put forth by the petitioner is genuine or not are part of cause of action for the suit and the same can be decided only after conclusion of trial and thereby dismissed the application.

5. Heard both sides and perused the materials available on record.

6. While considering the application filed under Order VII Rule 11 to reject the plaint, Court has to take into consideration only the averments in the plaint. The contention of the defendants in the affidavit and documents relied on by the defendants are

not relevant.

V.M.VELUMANI, J.

jv

7. The learned Judge, considering all the materials available on record, dismissed the application by giving cogent and valid reasons. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 20.3.2015.

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

08.06.2017

Index : Yes
speaking order/non speaking order
jv

To
The Principal District Judge,
Tiruppur.

C.R.P.(PD)No.2910 of 2015
<http://www.judis.nic.in>