

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.78 of 2014
and M.P.No.1 of 2014

N.Kalichamy

.. Petitioner

Vs.

1. S.Rangammal
2. Subammal
3. Lakshmi

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and final order made in I.A.No.816 of 2012 in O.S.No.575 of 2012 on the file of the learned V Additional District Judge, Coimbatore dated 21.08.2013.

For Petitioner

: Mr.M.Baskar

ORDER

This Civil Revision Petition has been filed against the fair and final order dated 21.08.2013 made in I.A.No.816 of 2012 in O.S.No.575 of 2012 on the file of the learned V Additional District Judge, Coimbatore.

2. The petitioner is the 1st defendant, 1st respondent is the plaintiff and respondents 2 and 3 are the defendants 2 and 3 in O.S.No.575 of 2012. The 1st respondent filed the suit for partition claiming 1/4th share and other consequential relief. The petitioner filed IA No.816 of 2012 to reject the plaint on the ground that elder sister of the respondent can legally act as guardian of the respondents 2 and 3 and the release deed executed is a valid one. The suit is barred by limitation and there is no cause of action to file the suit. The petitioner has perfected his title by adverse possession.

3. The 1st respondent filed counter affidavit and submitted that the suit is not barred by limitation.

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

5. The learned Judge, considering the averments made in the plaint, affidavit, counter affidavit and the materials available on record, dismissed the application.

6. A reading of the impugned order, shows that the learned Judge has applied the principles properly, while considering the application for rejection of the plaint, as per the well settled law. In the application for rejection of the plaint, the averments mentioned in the plaint will have to be taken into consideration. In the present case, the learned Judge has observed that limitation is a mixed question of law and fact and it has only to be decided by appreciating the evidence let in by parties during trial. Hence the Civil Revision Petition is devoid of merits.

7. In the result, this Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

08.06.2017

Index : Yes
speaking order/non speaking order
jv

V.M.VELUMANI, J.

jv

To
The V Additional District Judge,
Coimbatore.

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