

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2017

CORAM :

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

**C.R.P.(PD).No.4803 of 2015
and M.P.No.1 of 2015**

P.Sundaram

... Petitioner

Vs.

1. G.Ramaswamy
2. Sri Kumar
3. Velu Prabha

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 13.08.2015 (herein after referred to as the impugned order) which the learned Civil Judge was pleased to dismiss the I.A.No.259 of 2014 in O.S.No.119 of 2013 under Order VII Rule 11 of C.P.C

For Petitioner : Mr.M.Velmurugan

For Respondents : Mr.V.Lakshminarayanan for
M/s.V.S.Senthil Kumar

ORDER

The third defendant is the petitioner herein challenging the order of dismissal passed in I.A.No.259 of 2014 filed under Order VII Rule 11 C.P.C.

2. The suit is filed by the plaintiffs for partition. According to the petitioner, there is no cause of action for filing the suit, which is also bad for non-joinder of necessary parties and hence, prayed for rejection of the plaint. For better appreciation of the facts, the relationship of the parties are relevant. One Rangappa Naidu was the owner of the properties, who had four sons and two daughters. There was a partition in 1997 between them. One of the sons is Ponnusamy Naidu. He had three sons and a daughter. The daughter's children are the plaintiffs and the children of two of the sons are the defendants. Admittedly, the said Ponnusamy Naidu and his children constituted a joint Hindu family and in possession of the properties that were allotted to the said Ponnusamy Naidu in the

family partition between him and his brothers. Therefore, the plaintiffs have filed the suit claiming 1/4th share in the suit property being the children of the deceased daughter. The third defendant has contended that there is no cause of action for filing the suit, as the litigation between the various parties to the original partition that took place in the year 1977, was settled, on the basis of the written statement filed by the father of the first and second defendants in O.S.No.859 of 1979. The respondents had suppressed all the material facts. Hence, the above application was filed.

3. According to the third defendant, at the time of such oral partition, the daughter Amirtham was not a co-parcener, as she had died in the year 1980 itself. So, the said Amirtham cannot have any right in the suit properties. Hence, the children cannot now maintain the suit property. On the contrary, the plaintiffs have contended that the said Rangappa Naidu died intestate in the year 1954 and after his death, the suit schedule properties

were allotted to the said Ponnusamy Naidu, Son of Rangapa Naidu. The said Ponnusamy Naidu had three sons and a daughter. One son, namely, Kannappa Naidu died leaving behind the defendants 1 and 2 and another son Sundaram, the third defendant/petitioner herein. The last son is one Soundara Rajan who died leaving behind the fourth defendant as legal heir. The plaintiffs are the legal heirs of the daughter Amirthan. The said Ponnusamy Naidu and his children constituted a joint Hindu family of the properties, which were allotted to Ponnusamy Naidu in the family partition between him and his brothers. As in the hands of the said Ponnusamy Naidu, the properties were separate, the plaintiffs have claimed $1/4^{\text{th}}$ share in the suit property. It is also stated that there was a suit for partition in the year 1990 in O.S.No.182 of 1990 on the file of the I Additional Sub Court, Coimbatore, without adding the plaintiffs herein as parties. I.A.No.851 of 2017 filed to implead the defendants, was later not pressed and the defendants being the parties to the proceedings, had deliberately failed to allot a share to the second and third

plaintiffs, who are legally entitled for the same. As the heirs of the said Amirtham were not parties to the said suit, the same is not binding on them. The trial Court, after considering the facts and submissions, had dismissed the application.

4. The only question that arises for consideration is as to whether the application under Order VII Rule 11 C.P.C has to be allowed.

5. The plaintiffs are the children of the predeceased daughter of Ponnusamy Naidu claiming a share in the suit properties. It is pointed out that in the plaint itself, it is admitted that it is a joint family property. Even presuming that it is a joint family property among Ponnusamy Naidu and his children, on the date of death of the said Ponnusamy Naidu, there is a notional partition. The share of the father Ponnusamy Naidu has to be divided between the children including the daughter. This right cannot be disputed. Therefore, whether the suit

property is a joint family property or separate property, the plaintiffs are entitled for a share of a different proportion. Whether it is a joint family property or a separate property, it has to be decided only in the suit. The share will only differ subject to the nature of the property. Whether there was an earlier suit and whether the plaintiffs are parties or not and what is the binding nature of the same, can be gone into only in the trial. It is rudimentary that while deciding an application under Order VII Rule 11 CPC, only plaint averments can be gone into. Even as per the plaint, the plaintiffs have made out a case for the cause of action. The suit being one for partition and the parties being closely related as sharers, the application under Order VII Rule 11 CPC in this case, becomes irrelevant. The partition is only based on law of inheritance and going by the plaint averments, the plaintiffs have made out a case for cause of action in the suit for partition and the contention of the third defendant that the suit has to be rejected under Order VII Rule 11, is not maintainable.

6. In view of the above, this Court does not find any infirmity in the order challenged in the revision and the revision deserves to be dismissed.

7. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.2.2017

Index: Yes/No
Internet: Yes/No

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PUSHPA SATHYANARAYANA.J
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To

The IV Additional District and Sessions Judge,
Coimbatore.

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