

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4071 of 2009
and M.P.No.1 of 2009

Nithyanandam @ Babu ... Petitioner

Vs.

Subramani ... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 06.11.2009 made in I.A.No.234 of 2009 in O.S.No.455 of 2006 on the file of the Additional District Court-cum-Fast Track Court No.1, Coimbatore.

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For Petitioner : Mr.L.Mouli

For Respondent : Not ready in notice

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 06.11.2009 made in I.A.No.234 of 2009 in O.S.No.455 of 2006 on the file of the Additional District Court-cum-Fast Track Court No.1, Coimbatore.

2. The petitioner is second defendant and respondent is the plaintiff in O.S.No.455 of 2006 on the file of the Additional District Court-cum-Fast Track Court No.1, Coimbatore. The respondent filed the above suit of partition. The petitioner filed written statement and is contesting the suit. The petitioner filed I.A.No.234 of 2009 to decide the issue of Court fee payable as a preliminary issue and direct the respondent to amend the plaint and to pay the deficit Court fee.

3. According to the petitioner, there was a family arrangement on 28.05.2003 between the petitioner and respondent and first defendant in the suit. As per the said family arrangement arrived before the Panchayat, the respondent was allotted a specific portion within the suit property. The family arrangement deed was acted

upon and respondent is receiving rent from the portion allotted to him. The partition has been effected by family arrangement and the respondent cannot seek the second partition without first seeking cancellation of family arrangement deed. The market value of the suit property is not less than Rs.75,00,000/- and Court fee payable is Rs.5,62,500/- for the relief of cancellation of family arrangement.

4. The respondent filed counter affidavit and opposed the said application. According to the respondent, the family arrangement is only a temporary arrangement for the petitioner and respondent to enjoy the rental income. The third defendant in the suit, who is the sister of the petitioner and respondent is not a party to the said family arrangement. The said family arrangement can be relied upon only for the collateral purpose and it cannot be termed as partition deed.

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

6. Against the said order of dismissal dated 06.11.2009 made in I.A.No.234 of 2009, the present Civil Revision Petition is filed by the petitioner.

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

8. From the averments made in the plaint, it is seen that the respondent has sought for partition. He is in joint possession of the suit property and paid fixed Court fee. According to the respondent, no partition was effected among the members of joint family and the suit property continuous to be joint family property.

9. On the other hand, it is the contention of the petitioner that the respondent cannot claim partition without first getting cancellation of family arrangement deed dated 28.05.2003. For such cancellation, he has to pay the Court fee at market value. This contention of the petitioner is without merits. The respondent has filed suit for partition on the ground that family arrangement is only temporary arrangement and it is not a partition of joint family property. It is for the respondent as a plaintiff to seek and decide

nature of relief in a suit property. The petitioner as a defendant cannot dictate terms to the respondent/plaintiff to seek a particular relief that is cancellation of family arrangement. It is for the petitioner to prove his contention raised in the written statement by letting evidence.

10. To decide the application for rejection of plaint, the only consideration is averments made in the plaint and documents filed along with the plaint. The averments made in the written statement, affidavit and documents filed cannot be considered at that stage.

11. It is well settled that to decide the issue of Court fee, the averments made in the plaint has to be read as a whole and only when there is substance in the objection raised by the defendant with regard to deficit Court fee, the Court can pass orders after considering the averments made in the affidavit and counter affidavit.

12. In such circumstances, the Court can permit the party to let in evidence only with regard to value of the property. In the present case, the petitioner is raising an objection with regard to

Court fee on the ground that the respondent has to first seek cancellation of family arrangement and then only, he can seek relief of partition and this contention is without any substance.

13. The learned Judge considering family arrangement took note of the fact that the petitioner has not produced any document to show that the suit filed by the respondent is based on the family arrangement. For the above reason, the Civil Revision Petition is dismissed as devoid of merits.

14. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

25.10.2017

Index : Yes/No
kj/msrm

To

The Learned Additional District Judge-cum-
Fast Track Court No.1,
Coimbatore.

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V.M.VELUMANI, J.

kj/msrm



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