



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.39 of 2017 (PD) and
CMP(MD).No.161 of 2017

R.Abdul Rasheed ... Petitioner/ Petitioner/ Defendant

Vs.

1.R.Rameejabi
2.R.Jaibunisha
3.Meharunnisha
4.R.Jeenath Begam
5.R.Sherifa Bi ..Respondents/ Respondents / Plaintiffs

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to prefer the above Civil Revision Petition against the Fair and Decreetal order dated 10.11.2016 made in I.A.No.274 of 2016 in O.S.No.32 of 2016 on the file of the I Additional District Judge (PCR), Trichirapalli.

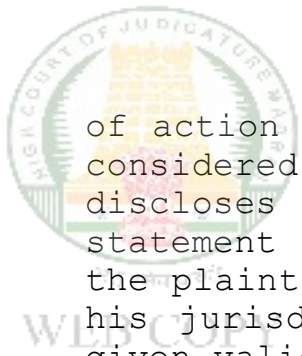
For Petitioner : Mr. T.Antony Arul Raj

ORDER

The petitioner has filed this Civil Revision Petition against the Fair and Decreetal order dated 10.11.2016 made in I.A.No.274 of 2016 in O.S.No.32 of 2016 on the file of the I Additional District Judge (PCR), Trichirapalli.

2. The petitioner is the defendant. The respondents are the plaintiffs. The respondents filed suit in O.S.No.32 of 2016 on the file of the I Additional District Judge (PCR), Trichirapalli for partition. The petitioner filed I.A.No.274 of 2006 to reject the plaint on the ground that no cause of action have arisen, after death of their mother. The respondents filed counter affidavit and stated that they are entitled to relief claimed in the suit and stated that cause of action has arisen and only the averments in the plaint can be considered in the application for rejection of the plaint and prayed for dismissal of the application.

<https://hcservices.courts.gov.in/hcservices/>
3. The learned Judge considering the averments made in the affidavit and counter affidavit dismissed the application on the



of action and the respondents denied the same. The learned Judge considered the averments made in the plaint and held that plaint discloses cause of action and held that averments in the written statement and affidavit in support of the application to reject the plaint, cannot be considered. The learned Judge has exercised his jurisdiction conferred on him in proper perspective and has given valid reason for dismissal of the application.

8. The learned Judge stated that by way of settlement deed executed by their mother, they have also pleaded in the plaint in Para 11 that they have relinquished their claim based on the settlement deed sought for in the earlier suit and now, they are ready to share the suit properties with the defendant as per the Islamic Law. It is further pleaded that the defendant is not ready for partition. The cause of action arose in the month of August 2014, subsequently, the petitioner refused to agree for amicable partition and instead attempted to grab the plaintiff's respective shares in the suit properties and held that reading of the plaint documents along with plaint discloses cause of action for filing the suit for partition. The Judgment relied on by the counsel for the petitioner and cited above has no application to the present facts of the case. In the circumstances, there is no illegality or irregularity in the order passed by the Court below warranting interference by this Court.

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

Sd/-
Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To

The I Additional District Judge (PCR), Trichirapalli.

+1 cc to MR.T.ANTONY ARUL RAJ, Advocate SR.No.2199

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