

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.04.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

**C.R.P(PD)No.1377 of 2018
and
C.M.P.No.7396 of 2018**

C.K.P.Hariselvam@K.P.Hari

...Petitioner/3rd defendant

Versus

1. E.Pavithra

2. E.Kalaiselvi

...Respondents 1 & 2/Plaintiffs/Respondents 1 & 2

3. R.Eshwaran

4. G.Paapa

...Respondents 3 & 4/defendants 1 & 2/respondents 3 & 4

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the order and decretal order dated 13.02.2018 made in I.A.No.630/2017 in O.S.No.521/2016 on the file III Additional District and Sessions Judge, Coimbatore and allow the above Civil Revision Petition.

For Petitioner

: Mr.N.Ishtiaq Ahmed

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ORDER

1. The third defendant in O.S.No.521 of 2006 on the file of the Additional District and Sessions Judge No.III, Coimbatore, has come forward with this Revision Petition impugning an order passed in I.A.No.630 of 2013 which the revision petitioner has filed for rejection

2. The respondents 1 & 2 herein have filed a suit for partition of the suit property. According to the plaint, the suit property originally belonged to a certain Karuppa Gounder and his younger brother Nanjappa Gounder. On their demise, the property devolved to their children and in their hands, the property was held as an ancestral property. The heirs of the Karuppa Gounder and Nanjappa Gounder have partitioned the property under the deed of partition dated 23.02.1931, wherein, one of the sons of Karuppa Gounder was also named Karuppa Gounder and he was allotted "A" Schedule property in the partition deed. This Karuppa Gounder had two sons, namely, Ganapathy Gounder and Rangasamy Gounder. They constituted a joint family, and the properties which their father Karuppa Gounder had obtained under the partition deed of 1932 was held by them as ancestral properties. On the death of their father both Ganapathy Gounder and Rangasamy Gounder partitioned the property in 1955, wherein, the plaint schedule property was allotted along with other properties to the share of Rangasamy Gounder. The first defendant is the son of Rangasamy and he had obtained half right in the suit property by birth. The plaintiffs are daughters of the first defendant and they too have acquired right by birth in the suit properties. The second defendant is the sister of the first defendant and they sold about 2.97 acres out of the entire extent of the suit property to the third defendant on 12.12.2005. The first defendant also sold another extent of 10 cents with buildings to the third defendant by a separate

sale deed dated 13.06.2012. These sale deeds do not affect the share of the plaintiffs/respondents 1 & 2 herein. Seeking a declaration that the sale deeds executed in favour of the third defendant as null and void, the plaintiffs seek partition of 1/3 share in the suit property.

3. The third defendant/purchaser of a portion of the suit property has filed I.A.No.630 of 2017 for rejection of plaint under Order VII Rule 11 of C.P.C. In the affidavit filed in support of the said Application, the contentions are two fold, namely,

- a) Firstly, the petitioners are incompetent to take a claim in the property of their father, the first defendant in the suit during his lifetime;
- b) Secondly, declaration is sought by the respondents after three years since the date of their execution which is barred under Article 58 of the Limitation Act.

4. In their counter affidavit, the respondents 1 & 2 contended that they were minors, that they attained majority in the years 2011 & 2013 respectively and that the present suit was filed in 2013 under the Limitation Act, a minor can file a suit for setting aside an alienation within three years of attaining majority. After considering the rival submissions, the Trial Court dismissed the said petition.

5. The learned District Judge in his order has reasoned that whether the properties are ancestral properties and which provisions of Limitation Act would be applicable are of matters for Trial and accordingly dismissed the petition.

6. Heard the learned counsel for the petitioner.

7. It has been stated several times by this Court that for rejecting a plaint under Order VII Rule 11 of C.P.C, the Court only has to look to the plaint, and if the plaint on the face of it does not disclose a cause of action or it is barred by any law, then the suit can be rejected on any one of the grounds indicated in Order VII Rule 11(a) or Order VII Rule 11(d) of C.P.C. This precisely has weighed with the court below. In the instant case, the reading of the plaint does not disclose anything that might invite the application of either of Order VII Rule 11(a) or Order VII Rule 11(d). The Trial Court has held that apart from the property that the revision petitioner has purchased from the respondents 3 & 4, the plaint property is still available for the consideration of the Court and to ascertain if the plaintiffs are entitled to a right of partition in that.

8. So far as in this case, the revision petitioner has not filed his written statement of defence. He is free to take such defence as are all available to him in law. It can also be indicated here that even

according to the plaintiffs, they are entitled to only 1/3rd share in the property which implies the remaining 2/3 shares belonged to defendants 1 & 2. If that is so, equities can still to be adjusted when a final decree is required to be passed, and hence, the petitioner is not without a remedy in law.

9. In the final analysis, this Court does not find any merit in this Civil Revision Petition and the same is dismissed. There cannot be an exception to Court fee payable. In the circumstances of the case, there will not be any order as to costs. Consequently, connected Miscellaneous Petition is closed.

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N. SESHASAYEE, J.,

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To

The Additional District and Sessions Judge No.III,
Coimbatore.



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