

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.R.P.(PD).No.3428 of 2013

&

M.P.No.1 of 2013

1.Badrunnisha @ Nisha
2.Fareedha

.. Petitioners

..Vs..

1.B.Noorjahan
2.B.Jameer
3.B.Mubarak
4.B.Shayin
5.Gowgarjohan
6.S.Ameer
7.Abdul Kadher
8.S.Mallika
9.S.Noorjahan
10.V.Hema
11.G.Padmanabhan

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 11.07.2013 in I.A.No.165 of 2013 in O.S.No.582 of 2012 on the file of the District IV Addl. District and Sessions Judge, Coimbatore.

For Petitioners : Mr.C.R.Prasanan
 For Respondents 1, 2, 4 & 5 : Mr.M.Elango
 For Respondents 3 & 10 : No appearance
 For Respondents 6 to 9 : Not ready in notice
 For Respondent 11 : Mr.K.R.Ramesh Kumar

ORDER

The instant revision has been filed challenging the order dated 11.07.2013 passed by the learned IVth Additional District Judge, Coimbatore in I.A.No.165 of 2013 in O.S.No.582 of 2012

Brief facts leading to the filing of the instant revision:

2. The petitioners are the defendants 1 and 2 in the suit O.S.No.582 of 2012 on the file of the learned IVth Additional District Judge, Coimbatore. The suit was filed by the respondents 1 to 5 against the petitioners for the following reliefs:

a) For declaration that the release deed dated 27.07.2011 registered as document No.2511 of 2011 on the file of the SRO, Peelamedu pertaining to the 1st item of the suit property executed between D-1 and D-2 as null and void.

b) For declaration that the release deed dated 28.02.2012 registered as document No.2528 of 2012 on the file of the SRO Singanallur pertaining to the 2nd item of the suit property executed between D-1 and D-2 as null and void.

c) For declaration that the sale deed dated 24.08.2011 registered as document No.2879 of 2011 on the file of the SRO Peelamedu pertaining to the 3rd item of the suit property executed by the 1st and 2nd defendants to the 7th defendant as null and void.

d) For declaration that the sale deed dated 22.12.2010 registered as document No.6888 of 2010 on the file of the Joint-I Sub-Registrar of Coimbatore pertaining to the 4th item of the suit property executed by the 1st and 2nd defendants to the 8th defendant as null and void.

e) For declaration of the legal heirship certificate dated 04.08.2010 given by the Tahsildar, Coimbatore South Taluk as null and void.

f) For a preliminary decree for partition by division of the suit property in between the plaintiffs and defendants 3 to 6 by metes and bounds and allotment for 2/9 share in common jointly for the plaintiffs 1 to 4 and allot 1/9th share for the 5th plaintiff in the suit schedule

mentioned property and put them into separate possession of their respective shares.

g) For permanent injunction restraining the defendant from encumbering or alienating the suit property.

3. According to the petitioners, the respondents 1 to 5 have made their claim based on the legal heirship certificate dated 21.12.2011 issued by the Tahsildar, Salem. According to the petitioners, the said legal heirship certificate is a bogus and fabricated document. The petitioners filed an application namely I.A.No.165 of 2013 in O.S.No.582 of 2010 under Order VII Rule 11 of Code of Civil Procedure to reject the plaint filed by the respondents 1 to 5 in O.S.No.582 of 2010 on the ground that the respondents 1 to 5 have abused of process of law by making a false claim against the petitioners based on a bogus and fabricated legal heirship certificate. A counter was also filed by the respondents 1 to 5 in I.A.No.165 of 2013. The Trial Court by its order dated 11.07.2013 in I.A.No.165 of 2013 in O.S.No.582 of 2010, dismissed the said application on the ground that since complicated questions of fact and law are involved in the suit, the question of rejection of plaint

will not arise.

4. Aggrieved by the order of dismissal of I.A.No.165 of 2013, the instant revision has been filed by the petitioners who are the defendants 1 and 2 in the suit O.S.No.582 of 2010.

Submissions of the learned counsels:

5. Heard, Mr.C.R.Prasanan, learned counsel for the petitioners, Mr.M.Elango, learned counsel for the respondents 1, 2, 4 & 5 and Mr.K.R.Ramesh Kumar learned counsel for the respondent 11. Eventhough notice served on the respondents 3 and 10, there is no representation on their side.

6. The learned counsel for the petitioners drew the attention of this Court to a letter dated 05.04.2013 issued by the Tahsildar, Salem to the District Collector, Salem wherein according to him, the Tahsildar has confirmed that the legal heirship certificate dated 21.12.2011 which was relied upon by the respondents 1 to 5 for the purpose of their claim was never issued by the office of Tahsildar. The learned counsel for the

petitioners also drew the attention of this Court to the written statement filed by the petitioners in O.S.No.582 of 2010 wherein they have categorically stated that the legal heirship certificate dated 21.12.2011 which was filed as plaint document No.10 is a bogus and fabricated document. According to him, since the respondents 1 to 5 who are the plaintiffs in the suit have abused the process of Court by relying upon a fabricated and bogus document for the purpose of making their claim against the petitioners, the Trial Court ought to have allowed the application filed by the petitioners for rejection of plaint.

7. Per contra, learned counsel for the respondents 1, 2, 4 and 5 would submit that the letter dated 05.04.2013 issued by the Tahsildar, Salem to the District Collector, Salem was never produced by the petitioners before the Trial Court, but has been placed only before this Court. According to him, the respondents 1 to 5 are disputing the genuineness of the letter dated 05.04.2013 issued by the Tahsildar, Salem to the District Collector, Salem.

Discussion:

8. The respondents 1 to 5 have filed a suit for declaration, partition and for permanent injunction. Both the petitioners and the respondents 1 to 5 are claiming rights over the suit schedule property. In the suit, the respondents 1 to 5 have produced a legal heirship certificate dated 21.12.2011 along with the plaint which was marked as document No.10, through which, they claimed rights over the suit schedule property. According to the petitioners, the said legal heirship certificate dated 21.12.2011 which was filed as document No.10 along with the plaint is a bogus and fabricated document, for which, before this Court they have produced a letter dated 05.04.2013 issued by the Tahsildar, Salem, to the District Collector, Salem with a copy marked to the petitioner to show that the legal heirship certificate dated 21.12.2011, based on which the suit was filed by the respondents 1 to 5 was never issued by the Tahsildar, Salem.

9. For deciding an application filed under Order VII Rule 11 of Code of Civil Procedure, it is settled law that this Court will have to look into only the plaint averments. When there are disputed questions of facts, it can be tested only after trial. In the instant case, the petitioners have

disputed the genuineness of the legal heirship certificate dated 21.12.2011, based on which certain rights have been claimed by the respondents 1 to 5 in the suit. The application has been filed by the petitioners under Order VII Rule 11 of Code of Civil Procedure to reject the plaint filed by the respondents 1 to 5 on the ground that the respondents 1 to 5 have abused of process of law by making their claim based on a fabricated and bogus document. Since the contention of the petitioners is disputed, the genuineness of the document can be tested only after trial. Further, in the instant case, written statement has also been filed by the petitioners before the Trial Court and the suit is ripe for Trial. The suit is of the year 2010. The Trial Court has rightly rejected the application since there are disputed questions of fact involved in the suit. Due to the long pendency of the suit, this Court is of the considered view that the suit has to be expeditiously disposed of.

Conclusion:

10. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. However, a direction is given to the Trial Court to dispose of the suit within a period

of three months from the date of receipt of a copy of this Order. The petitioners have been given liberty to raise all defences available to them including the grounds raised in the application I.A.No.165 of 2013 in O.S.No.582 of 2012 filed under Order VII Rule 11 of Code of Civil Procedure before the Trial Court.

17.12.2018

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Index:Yes/No

Internet:Yes/No

Speaking/Non-speaking orders

Note: Issue order copy on 18.12.2018

To

The IV Additional District and Sessions Judge,
Coimbatore.

WEB COPY

ABDUL QUDDHOSE, J.

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