

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1003 of 2015
and M.P.No.1 of 2015

R.Chokalingam

..Petitioner

Vs.

P.Saraswathi

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 18.08.2014 made in I.A.No.252 of 2013 in O.S.No.240 of 2010 on the file of the District Munsif Cum Judicial Magistrate Court, Pappireddipatty.

For Petitioner : Mr.C.Rajasekaran

For Respondent : Mr.S.Nagarajan

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 18.08.2014 made in I.A.No.252 of 2013 in O.S.No.240

of 2010 on the file of the District Munsif cum Judicial Magistrate Court, Pappireddipatty.

2. The petitioner is first defendant and respondent is plaintiff in O.S.No.240 of 2010 on the file of the District Munsif cum Judicial Magistrate Court, Pappireddipatty. The respondent filed said suit for partition and declaration that the partition deed dated 13.09.1982 is not acted upon, the same is null and void and not binding on the respondent, she has share in the suit property and for permanent injunction. The petitioner filed written statement in the month of April 2011 and is contesting the suit. On 10.01.2013, the petitioner filed I.A.No.252 of 2013 under Order VII Rule 11 C.P.C. for rejection of plaint.

3. According to the petitioner, the partition deed dated 13.09.1982 was acted upon and the parties took possession of the various properties allotted to them and dealt with the same. The respondent is party to the said document. The suit filed by the respondent is barred by limitation and respondent has not properly valued the suit and paid correct Court fee and prayed for rejection of plaint.

4. The respondent filed counter affidavit and contended that the petitioner has not made out any case for rejection of plaint as per the provisions of Order VII Rule 11 C.P.C.

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

6. Against the said order of dismissal dated 18.08.2014 made in I.A.No.252 of 2013 in O.S.No.240 of 2010, the present Civil Revision Petition is filed by the petitioner/first defendant.

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

8. The plaint can be rejected only if the ingredients of Order VII Rule 11 C.P.C. are made out. In the application for rejection of plaint, the averments made in the plaint and documents filed along with the plaint alone are necessary. A reading of the plaint discloses cause of action. The learned Judge considering the nature of the relief sought for by the respondent, has held that the suit has been properly valued and dismissed the application. The question of

limitation is mixed question of law and facts and the same can be decided only by appreciating the evidence let in by the parties. A reading of the impugned order reveals that the learned Judge considered all the facts in proper perspective and there is no reason or circumstances warranting interference by this Court with the order of the learned Judge dated 18.08.2014.

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

29.01.2018

Index:Yes/No

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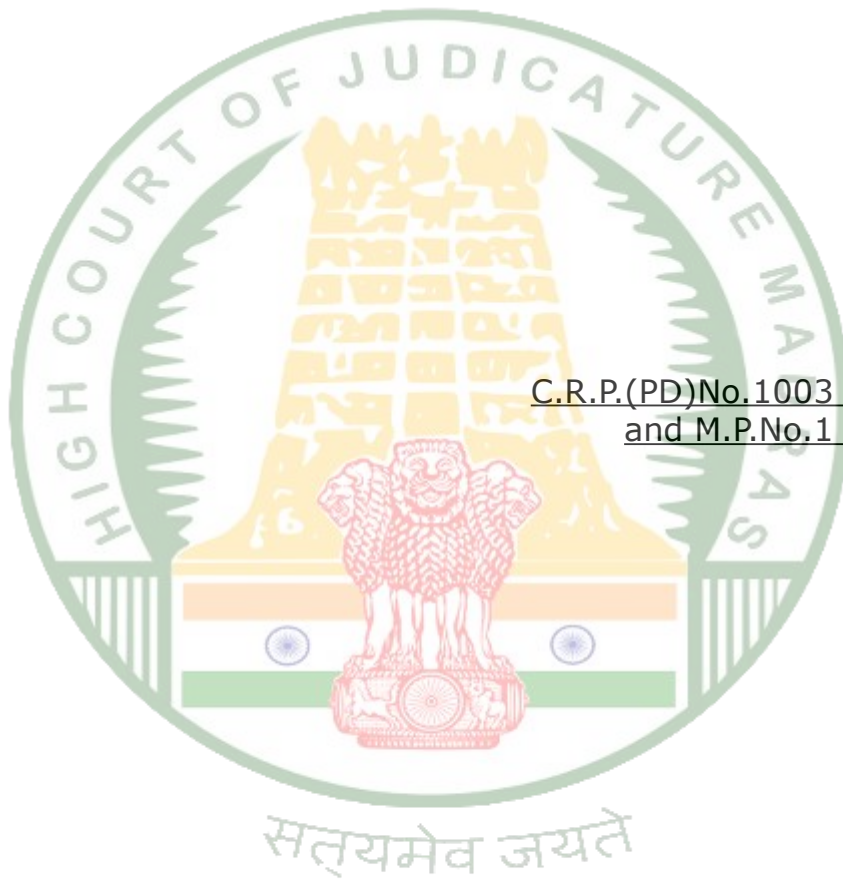
To

The District Munsif Cum Judicial Magistrate,
Pappireddipatty.

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V.M.VELUMANI,J.

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