



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD).No.1238 of 2016 and
C.M.P. (MD)No.5998 of 2016

1. T.Chinna Lakshmanan
2. Ve.Valliammal
3. P.Magudeeswaran
4. P.Rajamani

... Petitioners/Petitioners/
Defendants

Vs.

T.Dhendapani

... Respondent/Respondent/
Plaintiff

PRAYER : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to call for the records and set aside the fair and decreetal order dated 17.12.2015 in I.A.No.727 of 2015 in O.S.No.101 of 2014 on the file of the Sub Court, Palani and allow this Civil Revision petition with costs throughout.

For Petitioners : Mr.H.Lakshmi Shankar
For Respondent : Mr.Anand Chadrasekar,
for M/s.Sarvabhauman Associates.

O R D E R

The defendants in O.S.No.101 of 2014 on the file of the Subordinate Court, Palani, are the Revision petitioners herein. It is a suit for partition and separate possession. The Revision petitioners herein filed I.A.No.727 of 2015 for rejection of plaint. The said application was dismissed by order dated 17.12.2015. Questioning the correctness of the said order, the Civil Revision petition has been filed.

2. Heard the learned counsel on either side.

3. The learned counsel appearing for the Revision petitioners would contend that the respondent herein filed O.S.No.543 of 1988 for the very same relief along with his mother. The plaintiff claim that he was born to one Thangappan through his mother, Nagammal. His claim was denied even in the earlier round of suit filed way back in the year 1988 was dragged on for number of years and ultimately, allowed to be dismissed for default. Thereafter, the present suit has been filed.



4. The learned counsel appearing for the Revision petitioners would strongly contend that the present plaint is virtually a xerox copy of the earlier pleadings put forth by the respondent herein. He contended that the respondent is indulging in a severe abuse of legal process and re-litigation.

5. I am unable to agree with the contentions of the learned counsel for the Revision petitioners. In the very nature of things, dismissal of the earlier suit for partition for default will not bar filing a subsequent suit. As rightly contended by the respondent, this proposition is well settled. The learned counsel for the respondent brought to me the decisions reported in **1967 (1) M.L.J.175 (Rajah V.Maheswara Rao V. Rajah V.Rajeswara Rao) and 1999 (3) M.L.J. 494 (Subba Naicker V. Rangaswamy Naicker)** in support of this proposition.

6. I am of the view that the maintainability will have to be tested only by going through the plaint averments and the defence of the defendants cannot be looked into at this stage. These are questions of fact. They cannot be taken up as a preliminary issue and they will have to be decided in the main suit.

7. The issues such as limitation are mixed questions of fact and law. They will have to be necessarily gone into only in the main suit. Therefore, leaving open all the contentions available to the Revision petitioners to be decided in the main suit, the Civil Revision petition stands dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS-IV)

To

1. The Subordinate Judge,
Palani.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 COPIES)

+1 CC To M/s.SARVABHUMAN ASSO, Advocate SR. NO.82008
+1 CC To MR.H.LAKSHMI SHANKAR, Advocate SR. NO. 82059

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