

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

C O R A M

THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

C.R.P.(PD) No.2983 of 2014 &
M.P.No.1 of 2014

1.Mathunita
2.Suchithra
3.Deepthi

... Petitioners

Vs.

Kaliammal

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 29.10.2012 made in I.A.No.376 of 2012 in O.S.No.877 of 2011 on the file of the first Additional Sub-Court, Coimbatore.

For Petitioners ... Mr.P.Saravana Sowmiyan

For Respondent ... Mr.C.R.Prasanan

ORDER

The instant civil revision petition has been filed challenging the order dated 29.10.2012 passed by the learned First Additional

Subordinate Judge, Coimbatore in I.A.No.376 of 2017 in O.S.No.877 of 2011.

Brief facts leading to the filing of the instant revision:

2. The petitioners are the defendants 11 to 13 in the suit O.S.No.877 of 2011 pending on the file of the learned first Additional Subordinate Judge, Coimbatore. The respondent is the plaintiff in the suit and she has filed the suit against the defendants for declaration that the compromise decree dated 10.04.2000 passed by the learned First Additional District Munsif Court, Coimbatore as null and void and consequently, sought for partition of the suit schedule property. The petitioners filed an application I.A.No.376 of 2012 under Order VII Rule 11 CPC seeking rejection of the plaint filed in O.S.No.877 of 2014 on the ground that the suit is barred by law of limitation.

3. A counter affidavit was also filed by the respondent in I.A.No.376 of 2011 in O.S.No.877 of 2011 stating that fraud has been played upon the respondent by the petitioners and there was no family arrangement entered into between the parties and further, compromise

decree was not registered. Hence, according to the respondent, compromise decree cannot be acted upon. The Trial Court by its order dated 29.10.2012 dismissed I.A.No.376 of 2012 in O.S.No.877 of 2011 on the ground that the issues raised by the petitioners for rejection of plaint is a combination of facts and law and hence, not maintainable and the said issues can be adjudicated only after trial. Aggrieved by the order passed in I.A.No.376 of 2012 in O.S.No.877 of 2011, the petitioners who are the defendants 11 to 13 have filed an appeal before the learned Principal District Judge, Coimbatore in A.S.No.55 of 2013. The lower Appellate Court by order dated 22.01.2014 dismissed A.S.No.55 of 2013 on the ground that an appeal is not maintainable, since an error in exercise of jurisdiction, or a wrong or excessive exercise of jurisdiction or a refusal to exercise jurisdiction are all only subject to the revisional jurisdiction of the High Court. Since A.S.No.55 of 2013 was dismissed as not maintainable by the lower Appellate Court, the petitioners/defendants 11 to 13 have filed the instant Civil Revision Petition under Article 227 of the Constitution of India, challenging the order dated 29.10.2012 passed by the Trial Court in I.A.No.376 of 2012 in O.S.No.877 of 2011

4. Heard Mr.P.Saravana Sowmiyan, learned counsel for the petitioners and Mr.C.R.Prasanan learned counsel for the respondent.

Discussion:

5. The Trial Court has dismissed the application I.A.No.877 of 2012 filed by the petitioners on the ground that the issues raised by the petitioners viz., (a) limitation and (b) cause of action involves disputed questions of fact and law. This Court has perused the orders passed by the Trial Court as well as the order dated 22.01.2014 passed in A.S.No.55 of 2013 by the learned Principal District Judge, Coimbatore.

6. It is the case of the petitioners/defendants 11 to 13 that the respondent was a party to the compromise memo and the respondent is the third defendant in O.S.No.430 of 2000 wherein the compromise decree was passed. However, the respondent/plaintiff has disputed that there was any family arrangement amongst the family members and has also alleged fraud and collusion between the parties. It is also her case that the compromise decree has not been registered and therefore, it

cannot be acted upon by the parties to the said compromise decree. It is also their case that fraud has been played upon him by the petitioners/defendants 11 to 13.

7. Considering all these factors, this Court is of the considered view that only after trial, the issues raised by the petitioners/defendants 11 to 13 can be adjudicated by the Trial Court and not before that. The Trial Court as well as the lower Appellate Court in A.S.No.55 of 2013 has rightly held that no ground has been made out by the petitioners for rejection of plaint under Order VII Rule 11 CPC. This Court does not find any infirmity in the order passed by the Trial Court. However, while adjudicating the suit, issues raised by the petitioners in the rejection of plaint application I.A.No.376 of 2012 will have to be duly considered by the Trial Court along with other issues in the Judgment to be passed by it.

Conclusion:

8. In the result, the civil revision petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

9. Considering the long pendency of the suit, a direction is given to the Trial Court to dispose of the suit O.S.No.877 of 2011 in accordance with law, after considering the pleadings, oral and documentary evidence as well as the grounds raised in I.A.No.376 of 2012, within a period of three months from the date of receipt of a copy of this Order.

08.07.2019

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Index : Yes / No
Internet: Yes/No
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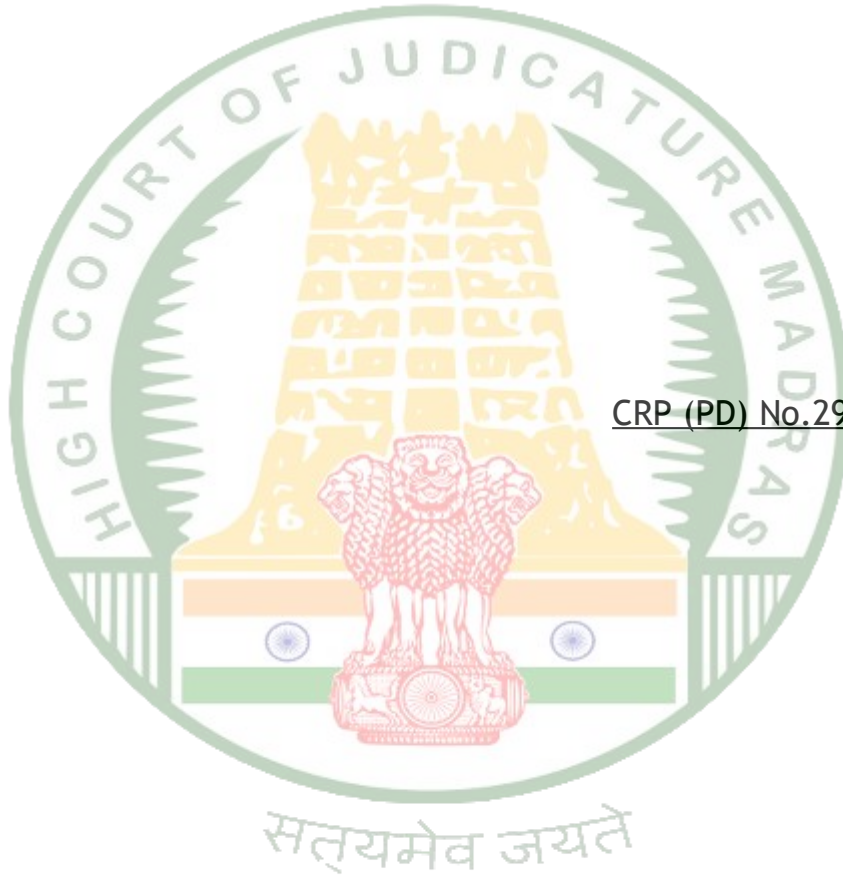
To

The First Additional Sub-Court, Coimbatore.

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ABDUL QUDDHOSE. J.,

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