

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 10..02..2020

Orders Pronounced on : 12..05..2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.2960 of 2017

&
C.M.P.No.13990 of 2017

and

Civil Revision Petition No.3495 of 2017

&
C.M.P.No.16241 of 2017

R.Sivasubramaniyan ... Petitioner in both CRPs

-Versus-

1.R.Periasamy

2.G.Guhan

3.Mrs.Hemalatha Mutukumar

4.Arulmigu Bhagavathiamman Deity,
Rep. by its Dharmakarthha K.S.Shanmugam,
Kalvettuppalayam,
Vengumbur Post,
Unjalur Via,
Erode Taluk.

(4th Defendant in the suit and
set-Exparte in the suit by the order dated 5-9-14
of Hon'ble 1st Additional District Judge, Erode)

5.Arulmigu Akkaraipatti Ponkaliasamman
Arulmigu Akkaraipatti Muthusamy and
Arulmigu Molipili Annamar Swami Deities,
Rep. by its Executive Officer,
Arulmigu Varadharaja Perumal Vagaiyara
Thirukkoil Devasthanam,
Vengumbur, Unajlour Via.,
Erode Taluk.

... Respondents in both CRPs

Prayer in C.R.P.No.2960 of 2017: Petition filed under Article 227 of The Constitution of India, praying to strike off the plaint in O.S.No.156 of 2014 on the file of the I Additional District Judge, Erode, Erode District.

Prayer in C.R.P.No.3495 of 2017: Petition filed under Article 227 of The Constitution of India, praying to set aside the order dated 19.08.2017 made in I.A.No.248 of 2015 in O.S.No.156 of 2014 by the learned I Additional District Judge, Erode, Erode District.

For Petitioner : Mr.Radha Krishnan for
petitioner in CRP No.2960
of 2017

Mr.Silambanan, Senior
Counsel for Mr.N.Thiagarajan
for petitioner in CRP
No.3495 of 2017

For Respondents : Mrs.Chitra Sampath, Senior
Counsel for Mr.T.S.Baskaran
for R1 in both CRPs

RR2 to 4 in CRP No.2960 of
2017 set ex parte in the
suit

No appearance for RR2 to 4
in CRP No.3495 of 2017

COMMON ORDER

The civil revision petition in C.R.P.No.3495 of 2017 has been filed against the order passed by the learned I Additional District Judge, Erode, dismissing the application filed by the petitioner in I.A.No.248 of 2015 under Order VII, Rule 11 of CPC r/w 151 of CPC seeking to reject the plaint in O.S.No.156 of 2014, while the other civil revision petition in C.R.P.No.2960 of 2017 has been filed under Article 227 of The Constitution of India seeking to strike off the plaint in O.S.No.156 of 2014.

2. Since the issues involved in the revision petitions were identical, one is for rejection plaint and the other is for strike off the plaint, both the revision petitions were taken up for hearing together, heard and are being disposed of by this common order. For the sake of convenience, the parties in the revision petitions will hereinafter be referred as per

their array in the trial court.

3. The brief facts leading to the filing the suit are as follows: The petitioner is the 1st defendant in the suit. The petitioner and the 1st respondent/plaintiff are the brothers. The 1st respondent/plaintiff filed the suit for a decree for (a) division of A-schedule properties into four equal shares by metes and bounds with reference to good and bad soil and allotment of two such shares contiguously and for separate possession; (b) division of the suit B-schedule properties into sixteen equal shares by metes and bounds with reference to good and bad soil and allotment of six such shares contiguously and for separate possession; (c) permanent injunction restraining the 1st defendant and his agents, or assignees from alienating or encumbering the suit properties till final partition takes place and (d) for appointment of an Advocate Commissioner to effect division of the suit properties. The above said suit has been filed on the ground that the suit A-schedule properties originally belonged to one K.S.Ramasamy Gounder, the father of the petitioner and the 1st respondent. Apart from the suit A-Schedule properties, the said Ramasamy Gounder had also purchased some other properties by means of registered sale deeds from out of his own income and as such A-schedule properties were his self acquired properties. B-schedule properties were his ancestral properties and some of the properties in B-Schedule were allotted to Ramasamy in a family partition dated 10.07.19764 and the other properties were purchased by him under various sale deeds. The said Ramasamy died intestate on 16.11.2010 leaving behind him two sons , the plaintiff and the 1st defendant and his widow - Karuppayammal and grand son and grand daughter , the defendants 2 and 3 through his predeceased daughter - Thangammal @ Thangam Ganapathy as his legal heirs. The said Karuppayammal had executed a registered Will dated 09.04.2013 bequeathing her estate in favour of the plaintiff in a sound state of mind out of her own will and volition. She died on 12.11.2013 and the Will came into effect after her death. Under the said Will Karuppayammal bequeathed 1/4th share in the suit A-schedule properties and 1/16th share in the suit B-schedule properties. Therefore, the plaintiff is entitled to 2/4th share in the suit A-schedule properties and 6/16th share in the suit B-schedule properties. Ever since the date of death of the father and the mother of the plaintiff, he has been in joint possession and enjoyment of the properties with the defendants. In the year 2014, the 1st defendant had executed two settlement deeds dated 15.04.2014 in favour of the 4th defendant deity in respect of some properties and another settlement in favour of the 5th defendant temple. Despite repeated demands for partition, there was no response and therefore, the present suit for partition

and separate possession.

4. Pending suit, the 1st defendant filed an application in I.A.No.248 of 2015 seeking to reject the plaint on the ground that the suit has been filed based on a Will executed by the mother of the plaintiff. The above said Will is not valid in the eye of law and it was not executed on the own and free will of the testator. The testator of the Will had no legal right to bequeath the properties and the Will was not executed validly in accordance with the provisions of law and as such the suit is not maintainable. The suit properties were the absolute properties of the father. Among the suit properties, some of the properties were the absolute properties of the father and the other properties were his ancestral properties in which he had specific percentage of shares. Hence, the properties became the separate legal entity called 'Estate of K.S.Ramasamy' which are to be distinguished from the personal properties of his legal heirs. Such status is created by operation of law and survive till all its obligations, responsibilities and liabilities are being fully discharged and settled and divided among the legal heirs in accordance with law. Hence, the properties are to be treated separately and individually accounted under the estate of K.S.Ramasamy. The plaintiff has been misappropriating the properties and has an intention to grab all the properties. According to the 1st defendant, the plaintiff has threatened him with dire consequences. In the above circumstances, the 1st defendant filed an application before the High Court under Section 10 of The Administrator General Act, 1963 in O.P.No.163 of 2013 seeking for a direction to the Administrator General to take possession of the properties and the same has been pending. While so, the present suit has been filed suppressing the pendency of the above said original petition. In order to escape from the order being passed in the Original petition, the present suit has been filed with a malafide intention and also with a view to stall the proceedings in the original petition. Hence, according to the 1st defendant, the application under revision came to be filed for rejection of the plaint on the ground that the suit was not correctly valued for the purpose of court fees and jurisdiction; and the plaint does not disclose any cause of action. The suit is liable to be rejected for non joinder of necessary parties and also for non payment of proper court fees.

5. According to the 1st defendant, the suit has been under valued and court fee paid is insufficient. That apart, since the plaintiff claims right under the Will, without probating the Will, the plaintiff cannot maintain the suit. As per The Hindu Succession Act, 1925, only the High Court has got power to decide the issue of probate and the court below does not

have jurisdiction to determine the issue relating to the genuineness of the Will and the suit is expressly and impliedly barred under Section 9 of CPC. The plaint is therefore, liable to be rejected.

6. The court below on considering the available materials refused to reject the plaint and thereby dismissed the application. Challenging the same, the 1st defendant is before this court with C.R.P.No.3495 of 2017. Pending the application for rejection of plaint before the court below, the 1st plaintiff has filed another revision petition in C.R.P.No.2960 of 2017 under Article 227 of The Constitution of India seeking to strike off the plaint on the ground that the suit has been filed in abuse of process of court suppressing the pendency of the original petition in O.P.No.163 of 2013 with a view to prolong the proceedings in the above original petition. That apart, the suit is also barred by principles of constructive res judicata as the subject matter in the suit is being directly and substantially adjudicated between the same parties in the above Original Petition and therefore, the suit is not maintainable before the court below. When the plaintiff claims shares based on the Will, without getting the Will probated, he cannot maintain the suit and the court below has no jurisdiction to try the suit. Therefore, according to the 1st defendant, the pleadings are liable to be struck off.

7. Mr.M.Radha Krishnan, learned counsel appearing for the petitioner/1st defendant in C.R.P.No.2960 of 2017 would vehemently contend that earlier the petitioner had approached this court invoking the provisions of the Administrator General Act, 1963, for a direction to the Administrative General to take possession of the estate of Ramasamy. When the above original petition has been pending, the present suit has been filed for partition and separate possession suppressing the pendency of the original petition and therefore, the suit is not at all maintainable. When the issue in respect of the estate of Ramasamy has been pending before this court, the 1st respondent/plaintiff ought not to have filed the suit before the court below for partition which is nothing but a sheer abuse of process of court.

8. The learned counsel for the petitioner/1st defendant would further contend that a meaningful reading of the plaint does not disclose any cause of action for filing the suit. The plaintiff claims right in the suit schedule properties by virtue of Will said to have been executed by the deceased mother and the Will was not probated. Without probating the Will, the 1st respondent/plaintiff cannot maintain the suit on the basis of the Will and the court below has no jurisdiction

to decide the validity of the Will. In the above circumstances, according to the learned counsel, the court below lacks jurisdiction to entertain the suit. As the plaintiff has been misappropriating the Estate of Ramasamy, original petition has been filed and therefore, the issue involved in the original petition is substantially in issue in the suit for partition. and hence, the suit is barred under the principles of res judicata.

9. Mr.Silambanan, the learned senior counsel appearing for the petitioner/1st defendant in C.R.P.No.3495 of 2017 would contend that the plaint does not disclose any cause of action and therefore, the same is liable to be rejected at its threshold. The plaint is also liable to be rejected on the ground that it has been filed in gross abuse of process of court suppressing the pendency of the original petition before this court. According to the learned senior counsel, the power of this court under Article 227 of The Constitution of India to strike off the plaint is so vast compared to Order VII, Rule 11 of CPC. Thus, both the revisions are maintainable in the eye of law as the reliefs sought for in both the revisions are totally different.

10. Per contra, Mrs.Chitra Sampath, learned senior counsel appearing for the 1st respondent/plaintiff would contend that the original petition has been filed before this court only for the limited purpose of appointing Administrator General to take possession of the suit schedule properties in order to preserve the same from being misappropriated by the plaintiff. Mere pendency of the original petition would not prevent the plaintiff to seek for partition and separate possession of the schedule mentioned properties which is an independent right and the pendency of the original petition would no way stand as a bar to institute the suit for partition. That apart, now, the above original petition has also been dismissed by this court, by order dated 02.07.2019. Therefore, the objection raised by the petitioner is not maintainable.

11. According to the learned senior counsel , the Will was executed at Erode and the properties bequeathed under the Will are also situated in the same District and as such no probate is required under The Indian Succession Act, 1925. If at all the petitioner has got any grievance, it is always open to the petitioner to raise such objection during trial. Doubting the genuineness of the Will is not a ground for rejection of the plaint. Admittedly, the suit properties were the properties of Ramasamy Gounder and on his death, the properties would devolve on his Class-I heirs and hence, the plaintiff can maintain the suit for partition and the suit is not barred by any law. The

issue of valuation of the suit claim and non payment of proper court fees can be decided only during trial and the same cannot be a ground for rejection of the plaint. The plaint would clearly disclose a cause of action for the filing of the suit. That apart, when the application filed under Order VII, Rule 11 of CPC was pending before the court below, the petitioner cannot maintain another revision before this court under Article 227 of The Constitution of India. According to the learned senior counsel, at the time when the revision petition was filed, orders had been reserved on the application filed under Order VII, Rule 11 of CPC and by the time when the revision petition was moved for admission, the court below had dismissed the application filed by the petitioner for rejection of plaint, without disclosing the above fact, the petitioner had obtained an order of stay of all further proceedings in the suit and therefore, the civil revision petition which seeks strike off the plaint is not at all maintainable.

12. I have considered the rival submissions carefully.

13. The law is well settled that on a meaningful reading of the plaint, if it is found that the same is manifestly vexatious or does not disclose any right to sue, the suit can be rejected at the threshold. While, deciding an application under Order VII Rule 11 of C.P.C., the averments made in the plaint are only germane and the Court cannot look into either the written statement or any other materials produced by the defendant. The trial Court can exercise the power at any stage of the suit i.e., before registering the plaint or after issuing summons to the defendants or at any time before the conclusion of the trial. The plaint should be read as a whole and there cannot be any compartmentalization or segregation of various paragraphs in the plaint. That apart, from a reading of the plaint as a whole, if it is seen that the suit is barred by limitation, then, it is open to the court to reject the same.

14. In *Sopan Sukhdeo Sable and others Vs. Assistant Charity Commissioner and others* reported in (2004) 3 SCC 137, the Hon'ble Supreme Court has held as follows:

"10. In *Saleem Bhai and Ors. v. State of Maharashtra and Ors.* (2003 (1) SCC 557) it was held with reference to Order VII Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial Court can exercise the power at any stage of the suit - before registering the plaint or after issuing summons to the defendant at any time before

the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order VII Rule 11 of the Code, the averments in the plaint are the germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. 11. In I.T.C. Ltd. v. Debts Recovery Appellate Tribunal and Ors. (1998 (2) SCC 70) it was held that the basic question to be decided while dealing with an application filed under Order VII Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order VII Rule 11 of the Code. 12. The trial Court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order X of the Code. (See T.Arivandandam v. T.V.Satyapal and Anr. (1977 (4) SCC 467))"

15. In Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal reported in (2017) 13 SCC 174, the Hon'ble Supreme Court has held as follows:-

"7. The plaint can be rejected under Order VII Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order VII Rule 11, CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order VII Rule 11, CPC. Since the power conferred on the Court to terminate

civil action at the threshold is drastic, the conditions enumerated under Order VII Rule 11 of CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when, the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order VII Rule 11 of CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

[Emphasis supplied]

16. Keeping the above principles in mind let us now consider the issue involved in the revision petitions and it would be useful to refer the relevant provision in Code of Civil Procedure, 1908 which reads as follows:-

11. Rejection of plaint.- The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to

do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provision of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

17. The suit has been filed claiming partition of 2/4th share in suit A-schedule properties and 6/16th share in the suit B-schedule properties. The suit has been filed on the ground that A-schedule properties were originally owned by the father of the plaintiff and the 1st defendant namely Ramasamy which were allotted to him in a family partition held on 07.06.1970 between him and his sons. Thereafter, the father had purchased some properties from out of the income derived from the properties allotted to him. The B-schedule properties were his ancestral properties which were not subject matter in the earlier partition dated 07.06.1970. Some of the suit B-schedule properties were allotted to the father in the family partition dated 10.07.1964 and the other properties purchased by him under various sale deeds. The father died on 16.11.2020 intestate leaving behind his sons, the plaintiff and the 1st defendant, widow Karuppayammal and the legal heirs of the predeceased daughter - Thangammal. During her life time, on 09.04.2013, the mother - Karuppayammal had executed a Will in bequeathing her estate in favour of the plaintiff. On the death of the testator on 12.11.2013, the plaintiff has become entitled to 2/4th share in the suit A-schedule property and 6/16th share in the suit B-schedule property. The plaintiff has valued the suit claim in respect of A-schedule property at Rs.27,00,000/- and valued the suit claim in respect of B-schedule property at Rs.4,96,000/- and paid necessary court fees under Section 27 and 37(2) of The Tamil Nadu Court Fees and Suit Valuation Act towards his shares.

18. Pending suit, the 1st defendant filed an application

under Order VII, Rule 11 of CPC seeking to reject the the plaint. The above application has been filed mainly on the ground that the properties of the deceased father became a separate legal entity called "Estate of K.S.Ramasamy Gounder" which are to be distinguished from personal properties of legal heirs. As the plaintiff has been misappropriating the properties, the 1st defendant moved an application before this court in O.P.No.163 of 2013 under Section 10 of The Administrator General Act, 1963 seeking a direction to the Administrator General of Tamil Nadu to take possession of all the properties of his father. When the above original petition has been pending, the plaintiff filed the present suit suppressing the pendency of the original petition before this court. Hence, on the ground of non disclosure of the pendency of the original petition, the suit is liable to be dismissed. That part, the suit was also not properly valued for the purpose of court fees and for jurisdiction and the plaint also does not disclose any cause of action. It is further stated that the suit is liable to be rejected for non payment of proper court fees and the suit has been fraudulently instituted on insufficient court fees and the court below has no jurisdiction to entertain the suit. The affidavit filed in support of the application elaborately discussed about the valuation of each of the properties.

19. So far as the Will alleged to have been executed by the mother, according to the 1st defendant, the properties transferred by the mother through the Will are not her personal properties and she had no right to dispose of the same through the Will. That apart, the Will was not probated as per the Indian Succession Act, 1925 and therefore, the Will is non est in law and it is not enforceable. Court-fees have been paid by the plaintiff under Section 37(2) of The Tamil Nadu Court-Fees and Suit Valuation Act, 1955. Since the properties were not in the joint possession of the parties, court-fees ought to have been paid under Section 30 of The Tamil Nadu Court-Fees and Suit Valuation Act, 1955 instead of under Section 37(2) of the Act. Therefore, the plaint is liable to be rejected for non payment of proper court fees as well.

20. In the back drop of the above facts, the questions that arise for consideration in the revision petitions is as to whether the plaint can be rejected on the grounds raised by the petitioner/1st defendant.

21. The first and the foremost ground raised by the petitioner for rejection of the petitioner is that the plaintiff had suppressed the pendency of the original petition in O.P.No.163 of 2013 filed by the 1st defendant. The above

said original petition came to be filed under Section 10 of the Administrator General Act seeking a direction to the Administrator General to take possession of the suit schedule properties on the ground that the plaintiff has been misappropriating the funds of the properties in question. But, in the considered opinion of this court, the pendency of the above said original petition is not a bar for filing a suit for partition. The reliefs sought in the original petition and the suit are entirely different and distinct. It is also now stated that recently the original petition filed by the petitioner came to be dismissed by this court by order dated 02.07.2019. Thus, this court is of the view that the suit is not barred. Even assuming that fact of the pendency of the original petition was not disclosed in the suit in question, that cannot be a ground for rejecting the plaint and non disclosure of the pendency of the original petition will not have any repercussion in the suit.

22. Coming to question of undervaluation of the suit properties, under Order VII, sub-rule (b) of Rule 11 of CPC, the suit can be rejected if the suit is under valued and the plaintiff, on being required by the Court to so correct the valuation within the time fixed by this court and if the plaintiff failed to do so, then, the plaint can be rejected; or plaint can be rejected under Order VII, sub-rule (c) of Rule 11 of CPC, where the relief claimed has been properly valued, but the plaint was written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within the time fixed by the Court, the plaintiff failed to do so, then, the plaint can be rejected.

23. But, in the instant case, no such occasion arises. Furthermore, the issue as to whether the suit is properly valued or insufficient court-fee has been paid are all the issues to be decided by the court below on proper enquiry. On such enquiry, if the court is of the view that the suit claim has been undervalued and issued a direction to value the suit claim properly and despite such a direction, if the plaintiff failed to do so, then only, the plaint can be rejected under Order VII, Rule 11 (b) of CPC. This court in B.S.Garg v. R.Meena Sundar, [2016 (4) CTC 278] has held as follows:-

"8. Order VII Rule 11(b) deals with the question of rejection of the plaint where the relief claimed is undervalued and the plaintiff, having been required by the court to correct the valuation within a time to be fixed by the court, fails to do so. Perhaps conscious of the fact that a prayer for rejection of the plaint straight away on the

ground that the relief has been undervalued without first seeking a decision on the correctness or otherwise of the valuation and inviting a direction to the plaintiff to correct the value, cannot be sustained, the revision petitioner/first defendant has chosen to restrict his prayer in I.A.No.12876/2012 to the determination of court fee payable on the relief of declaration sought for in the plaint."

To decide the issue of court fee payable by the plaintiff, the plaint averments alone are to be considered at this stage and the objections of the defendants cannot be taken into consideration. In a similar circumstance, this court in P.Thillai Selvan v. Shyna Paul, (2014) 7 MLJ 732 has held that valuation of the suit and payment of court fee is a mixed question of law and fact and the plaint cannot be rejected based on the objections raised by the defendants. The relevant portion of the judgement reads as follows:-

"9. The valuation of the suit property and payment of court-fee thereon, are certainly not purely question of law and on the other hand, it is a mixed question of law and fact. Therefore, the plaint cannot be rejected based on the objection raised in respect of the valuation of the suit property, especially, when such objection is opposed and denied by the plaintiff.

24. The above said judgement was followed by yet another bench of this court in J.Vasanthi v. N.Ramani Kanthammal, (2016) 4 MLJ 375 : 2016 - 4 - LW 443, wherein the learned single Judge has held as follows:-

"12. Further the valuation of the property and court fee are not purely question of law. It is a mixed question of fact and law. This can be decided only, based on the evidence let in by the parties. Till that time, the averments made in the plaint has to be taken as correct, with regard to the valuation and payment of court-fee."

In these circumstances, the contention of the petitioner cannot be countenanced.

25. The next limb of the submission of the learned counsel for the petitioner is that the plaintiff claims his right over

the suit property by virtue of the Will said to have been executed by his mother and the mother had no right or title to bequeath the suit properties in favour of the plaintiff. That apart, the Will is yet to be probated and, therefore, the plaintiff cannot claim any right under the unprobated Will.

26. Whether the mother had title over the suit properties and right to bequeath the same is the matter to be decided in trial. As per the averments in the plaint, after the death of the father, the deceased mother Karuppayammal had a share in the said schedule properties and executed a Will dated 09.04.2013 bequeathing her estate in favour of the plaintiff. At this stage, the court can go only by the averments made in the plaint. Whether the mother had any right over the properties or not, cannot be decided before the trial. Therefore, at this stage, the right of the testator to dispose of the properties cannot be gone into and on that ground the plaint cannot be rejected.

27. So far as the probate of the Will is concerned, it is an admitted fact that the Will was executed at Erode and the properties are also situated in the same District. So, under Sections 57 r/w 213 of The Indian Succession Act, 1925, Will need not be probated. The parties in the suit are admittedly Hindus and the suit properties are not falling within the ambit of sub-sections (a) and (b) of Section 57 of The Indian Succession Act. Therefore, the probate of the Will is not required. The Hon'ble Supreme Court in Clarence Pais v. Union of India, AIR 2001 SC 1151 has held as follows:-

"6. A combined reading of Sections 213 and 57 of the Act would show that where the parties to the will are Hindus or the properties in dispute are not in territories falling under Section 57(a) and (b), sub-section (2) of Section 213 of the Act applies and sub-section (1) has no application. As a consequence, a probate will not be required to be obtained by a Hindu in respect of a will made outside those territories or regarding the immovable properties situate outside those territories."

28. That apart, the plaintiff is not resting his entire claim on the Will said to have been executed by the mother, apart from the Will, the plaintiff is also claiming 1/4th share in the suit A-schedule property and 5/16th share in the suit B-schedule property. Even assuming that the Will is not valid and the same required to be probated, on that score, the plaint

cannot be partially rejected in respect of the claim made by the plaintiff on the strength of the Will in question. Thus, the contention of the 1st defendant cannot be countenanced.

29. On considering the entire materials, the court below has rightly refused to reject the plaint and this court does not find any infirmity in the reasonings given by the court below in dismissing the application and there is no need to interfere with the order of the court below impugned in the revision petition. Thus, the revision petition C.R.P.No.3495 of 2017 is liable to be rejected.

30. So far as the revision petition in C.R.P.No.2960 of 2017 is concerned, it has been filed seeking to strike off the very same plaint in O.S.No.156 of 2014 on the file of the I Additional District Judge, Erode. On the very same grounds raised for the rejection of plaint, this revision petition has been filed simultaneously when the application filed under Order VII, Rule 11 of CPC for rejection of the plaint was pending. At the time of arguments, it was pointed out by the learned senior counsel appearing for the 1st respondent that the present revision petition has been filed after the orders were reserved by the court below on the application filed by the 1st defendant for rejection of the plaint. It was also pointed out that by the time when the revision petition came up for admission before the court, the application for rejection of the plaint was dismissed by the court below. But, without disclosing the above fact, the 1st defendant had moved the revision petition and obtained an order of interim stay of all further proceedings in the suit. In the considered opinion of this court, the instant revision petition has been filed in total abuse of process of law. The instant revision petition has raised the very same grounds which were raised in the application filed under Order VII, Rule 11 of CPC for rejection of the plaint. This court has already rejected the grounds raised by the 1st defendant in the preceding paragraphs while dealing with the revision petition in C.R.P.No.3495 of 2017 and therefore, this revision is also liable to be dismissed.

31. For the foregoing discussions, both the revision petitions fail and the order of the court below impugned in C.R.P.No.3495 of 2017 does not require any interference at the hands of this court.

In the result, both the civil revision petitions are dismissed. The order dated 19.08.2017 made in I.A.No.248 of 2015 in O.S.No.156 of 2014 by the learned I Additional District Judge, Erode, Erode District, stand confirmed. Since the suit has been pending from the year 2014, the court below is

directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected, CMPs are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

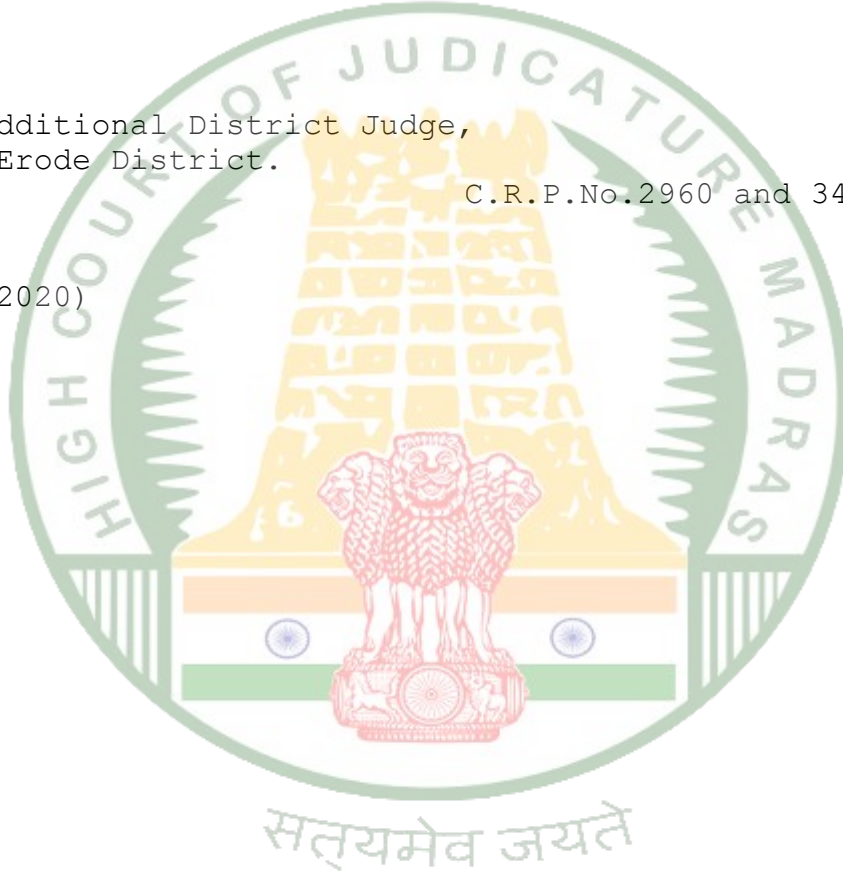
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To

1.The I Additional District Judge,
Erode, Erode District.

C.R.P.No.2960 and 3495 of 2017

LN(CO)
CB(03/08/2020)



WEB COPY