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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.12.2020

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD) No.1739 of 2015 (NPD)

and M.P. (MD) No. 1 of 2015

...Petitioner/Petitioner/8th Defendant

Vs.

Sivasubramanian @ Sironmani

...Respondent/Respondent/Plaintiff

PRAYER : Petition filed under Article 227 of Constitution of India, against the Fair order dated 08.04.015 made in I.A. No. 162 of 2015 in O.S. No. 2 of 2015 on the file of the Additional District Munsif Court, Nanguneri.

For Petitioner : Mr. R. Vijayakumar

For Respondent : Mr.R. Balakrishnan

ORDER

This petition has been filed, against the Fair order, dated 08.04.015 in I.A. No. 162 of 2015 in O.S. No. 2 of 2015 on the file of the Additional District Munsif Court, Nanguneri.

2. The respondent herein has filed a suit in O.S. No. 2 of 2015 on the file of the Additional District Munsif Court, Nanguneri to pass a preliminary decree. During the pendency of the suit, the revision petitioner/8th defendant has filed a petition in I.A. No.162 of 2015, Order 7 Rule 11(a)(b)(c) Section 151 of C.P.C, to reject the plaint and the same was dismissed by order, dated 08.04.2015. Against the said order, the Civil Revision Petition has been filed.

3. The learned counsel appearing for the revision petitioner submitted that the respondent herein/plaintiff has no right or share over the suit properties and there is no cause of action for filing the present suit. He further submitted that the respondent has not properly valued the suit property and has not paid proper Court fee. The reasons sustained by the Court below dismissing the petition is unsustainable in law and liable to be set aside. Therefore, he prayed to allow the Civil Revision Petition.

4. The learned counsel appearing for the respondent herein submitted that the petition in I.A. No.162 of 2015 is not maintainable. Originally, the suit properties were belonged to one Sivalinga Nadar and after the demise of the Sivalinga Nadar, his legal heirs were in joint possession. He further submitted that the respondent is a senior citizen and the I.A.No.162 of 2015 was filed before the Court below with an intention to drag on proceedings only. Hence, he prayed for dismissal of the Civil Revision Petition.



5. It is seen from the records that the petitioner had stated that there is no cause of action and the properties are more value and the Court below has no pecuniary jurisdiction. In the plaint filed by the plaintiff before the Court below, cause of action is clearly mentioned. Suit was filed for partition. The plaintiff had stated in the plaint that the defendants had denied to give share in properties. Whether the plaintiff is having share in the suit properties is the issue will be decided in the suit only. Further, as per plaint, the value of the property is Rs.40,000/- and paid Court fee. The petitioner/defendant who pleaded that the suit properties are more than the pecuniary value of the Court and he has to prove the value. But, he did not say the value of the properties. They simple say that the properties are more value. The properties are situated in the village.

6. The relevant portion of the Judgment reported in 2014 (5) LW 742, is extracted hereunder.

"It is well settled that insofar as the application filed under Order 7 Rule 11 of C.P.C., is concerned, the averments made in the plaint as such, have to be taken into consideration to find out as to whether the grounds contemplated under the above said provision, are made out or not. In other words, the facts as projected by the defendants cannot be looked into to find out as to whether the grounds are made out for rejecting the plaint, unless such grounds projected by defendants are also otherwise available and evident on plain reading of the plaint itself".

The petitioner has not proved the value of the properties and there is no cause of action. Even, the value is more than pecuniary jurisdiction the plaint cannot be rejected. After framing preliminary issue, the plaint can be returned for filing before the proper Court.

7. Hence, the learned Additional District Munsif, Nanguneri has rightly dismissed the I.A. No. 162 of 2015 in O.S. No. 2 of 2015. This Court has no valid reason to interfere with the findings passed by the Court below.

8. In fine, the Civil Revision Petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar

// True Copy //



NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Additional District Munsif Court, Nanguneri

+1 CC to M/s R.Vijayakumar, Advocate, in SR.No.27203.

Order made in
C.R.P. (MD) No. 1739 of 2015 (NPD)
22.12.2020

(CK) CO
AP (06/01/2021) 3P 3C