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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 8TH DAY OF SEPTEMBER 2021

THE HON'BLE MR. JUSTICE N.SESHASAYEE

A.No.1957 of 2015

in

C.S.No.733 of 2011

1.Mrs.A.M.Pushpa Joe,
W/o.M.Joseph Arul Swamy
Plot No.21, Flat No.G1, (*)
Kwality Flats, Sri Balaji Nagar,
Noombal, Chennai-600 077.

Amended as per the order dt.2.3.2021 made in A.No.544/2021 (*)

2.Mrs.Merlin Anita John,
W/o.Ashok John,
18, Mary Ann Drive,
Glenfield,
NSW-2167, Australia

... Plaintiffs

-Versus-

1. Antony Irudhayaraj
S/o.Mr.A.Arulappan,
No.23/2, LDG Road,
Little Mount Saidapet,
Chennai 600 015.

2.Mr.Joseph Andrews,
S/o.A.Arulappan,
37, Four Leaf Drive,
Toronto,
Ontario 49V 4116
Canada.



3.Mrs.Mary Stella,
W/o.Mr.Antony Irudhayaraj,
No.23/2, LDG Road,
Little Mount Saidapet,
Chennai-600 015.
A.No.1957 of 2015:

... Defendants

1.Dr.A.Anthony Irudhayaraj,
S/o.Late Arulappan,
No.23(Old No.2), LDG Road,
Little Mount,
Saidapet, Chennai-600 015.

..Applicant/Defendant 1

-Versus-

1.Mrs.A.M.Pushpa Joe
W/o.M.Joseph Arul Swamy,
No.23/2, LDG Road,
Little Mount, Saidapet,
Chennai-600 015.

..Respondent 1/Plaintiff 1

2.Mrs.Merlin Anita
W/o.Ashok John,
18,Mary Ann Drive,
Glenfield,
NSW-2167, Australia.

..Respondent 2/Plaintiff 2

3.Mr.A.Joseph Andrews
S/o.Late A.Arulappan,
37,Four Leaf Drive,
Toronto, Ontario 49V 4116,
Canada.

..Respondent 3 /Defendant 2

Application praying that this Hon'ble Court be pleased to pass an order to reject the plaint CS No.733 of 2011 pending on the file of this Court to keep the proceeding of all connected petitions in abeyance, filed under this suit till this petition is considered and disposed off.



This application coming on this day before this court for hearing, the

Court made the following order:

The suit is laid for partition, in which the 1st defendant has taken out application for rejection of plaint. The matter pertains to an estate of certain Arulappan.

2. According to the plaintiffs the said Arulappan had four children, of whom two are daughters and two are sons. Since the defendants 1 & 2 are here and one of the daughters has passed away, her child is the 2nd plaintiff and the 1st plaintiff is the sole surviving daughter of Arulappan. The schedule properties to the plaint pertaining to which the plaintiffs seek partition for items 1 & 2 of the items of properties and adjacent plots. Both items are purchased under the separate sale deed but both dated 28.08.1981 in the name of the Arulappan. The 'A' schedule property was purchased in the name of Arulappan and the 'B' schedule property in the name of the 1st & 2nd defendants.

3. The plaintiffs would plea in the plaint that at the time when the 'B' schedule property was purchased, the defendants were young and did not

have any independent source of income and their father Arulappan had



purchased the same in the name of his sons. In other words, the case is that the Arulappan purchased the 'B' schedule property benami in the name of the defendants 1 & 2.

4. It is in this backdrop that the 1st defendant's has come forward with this application for rejecting the plaint. His contentions are:

(a) that the 'B' schedule property is the exclusive property, and that he is holding it from 1981, and it is not available for partition.

(b) The suit is instituted also only 2011 and hence it is barred by limitation.

Indeed in cause of action column in the plaint, the plaintiffs have relied on the date of the sale deed viz. 28.08.1981 as one of the facts to the cause of action; and

(c) The suit cannot be valued under 37(2) of the Tamilnadu Court Fee Suits Valuation Act 1965 but that has to be valued under 37(1) of the Tamilnadu Court Fee Suits Valuation Act 1965, since neither of the plaintiffs are physically living in 'B' schedule property.

6. The plaintiffs have filed their counter and rejoinder to the counter has also been filed.

7. Heard both sides.



8.If the core allegations of the plaint is carefully considered, each one of them either raises a disputed fact or mixed question of law and facts.

9.So far as the said valuation is concerned, there is a presumption that possession by one co-sharer is considered as possession for all. This presumption can be rebutted by appropriate plea and proof, but it is still a question of fact.

10.Where a litigation raises a triable issue on fact, or a mixed question of law and fact, it may not be possible to hold that the plaint is liable for rejection.

11.This Court finds there is no merit in this application. This application stands dismissed accordingly.

12.Post the suit in C.S.No.733 of 2011 on 27.09.2021 for framing issues.

Sd./-NSSJ
08.09.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

JJ 16/09/2020

COURT OFFICER(O.S.)

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