

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD)No.31 of 2018
and C.M.P.No.82 of 2018

S.Sadiq Basha ... Petitioner

Vs.

S.Mohammed Ali ... Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 30.11.2017 made in I.A.No.476 of 2016 in O.S.No.27 of 2015 on the file of the Principal Subordinate Court, Salem.

For Petitioner : Mr.K.A.Ravindran

For Respondent : Mr.P.Jagadeesan

ORDER

The Civil Revision Petition is directed as against the fair and decreetal orders dated 30.11.2017 passed by the learned Principal Subordinate Judge, Salem, in I.A.No.476 of 2016 in O.S.No.27 of 2015, thereby dismissing the petition to reject the plaint in O.S.No.27 of 2015.

2. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed suit in O.S.No.27 of 2015 for partition. While pending the suit, the petitioner filed petition in I.A.No.476 of 2016 for rejection of plaint on the ground that, the respondent did not issue any demand notice for partition as such, there is no cause of action for filing the present suit for partition. Further stated that there is a bar under Mohammeden Law to divide the property equally. There is no deduction of funeral expenses residencery shares and proper share has not shown and it is against the Mohammeden Law. The trial Court dismissed the above said petition as against which the present Civil Revision Petition.

3. On perusal of the records revealed that the petitioner already filed two suits in O.S.No.100 of 2015 and O.S.No.212 of 2014 on the file of the Sub Court, Salem for bare injunction in respect of the very same properties. In the said plaint, the petitioner stated that there is no partition till date. Therefore, the respondent was constrained to file the present suit for partition. Further the respondent need not to issue pre-suit notice for filing the suit for partition as such, the Court below rightly dismissed the

petition for rejection of plaint and this Court finds no illegality or infirmity in the order passed by the Court below.

4. Accordingly, this Civil Revision Petition stands dismissed.

Since the suit is of the year 2015, the trial Court viz., the learned Principal Subordinate Judge, Salem is directed to dispose the suit within a period of nine months from the date of receipt of a copy of this Order. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

08.04.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts

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G.K.ILANTHIRAIYAN, J.

rts

To

1. The Principal Subordinate Judge,
Salem.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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