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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2021

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

C.R.P.No.1470 of 2021
and C.M.P.No.11556 of 2021
(Through Video Conference)

Rahamathunnissa Beevi @ Rahamath Beevi

... Petitioner /
3rd Defendant

Vs.

1. Syed Sultan Ali

2. Meharaj Begum

... RR 1 & 2/
Plaintiffs 1 & 2

3. Koji Mohamed Basudeen

4. Meharunnissa

5. Abdul Samad

6. NAS Ansari

... RR 3 to 6/
Defendants
1,2,4 & 5

7. The Sub-Registrar,
Parangipettai,
Bhuvanagiri Taluk.

8. The Tahsildar
Bhuvanagiri Taluk,
Cuddalore District.

9. The State of Tamil nadu,
Rep. by Collector,
Cuddalore District,
Cuddalore.

... RR 7 to 9/
Defendants 6-8

PRAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India to strike off the plaint in O.S.No.117/2021 from the file of the District Judge, Cuddalore.



For petitioner

: Mr.K.Moorthy

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O R D E R

This Civil Revision Petition is filed for striking of the plaint in O.S.No.117/2021 on the file of the District Judge, Cuddalore.

2. The grounds on which this Civil Revision Petition has been filed are :-

- (i) The plaint does not disclose a cause of action;
- (ii) From the statement of the plaint, the suit itself appears to be barred by the Law of Limitation; and
- (iii) The statement of the plaint appears to be vexatious and abuse of the process of law of Court.

3. These are the grounds on which the petitioner wants to strike out the plaint and this petition is filed under Article 227 of the Constitution of India made with Order VII Rule 11 of the Civil Procedure Code.

4. Without going into the merits of the case, all these grounds raised by the petitioner are available to him under Order VII Rule 11 of the Civil Procedure Code. If the petitioner is able to prove that this case has no cause of action and that this case is barred by the Law of Limitation and it is vexatious and abuse of process of law of court, he can very well file an application before the trial Court under Order VII Rule 11 of the Civil Procedure Code for rejection of plaint.

5. The suit was filed for the following reliefs:

- (a) for administration of the estate of deceased Mohamed Meeran, by effecting partition in respect of the suit 'B' schedule properties;
- (b) a preliminary decree may be passed in respect of the 21/40 shares of the plaintiffs in the suit 'B' schedule properties;
- (c) in final decree proceedings, an advocate / Commissioner may be appointed to divide the suit 'B' schedule properties into 40 shares and 21 such shares may be allotted to plaintiffs contiguously;
- (d) plaintiffs may be put in such possession of the share allotted to them and if necessary, possession may be delivered through Court;
- (e) enquiry into future accounting may be ordered by separate proceedings under Order 20 Rule 18 CPC; and



(f) directing the contesting defendants to pay plaintiffs the cost of this suit.

6. The case of the plaintiffs is that the properties described in 'B' schedule belonged to Mohamed Meeran. It was obtained by him from his ancestors. The properties have been in the family of Mohamed Meeran for over 100 years and hence there is no document of title. The properties are vast in extent. Very many persons committed trespass upon the 'B' schedule properties. It became very difficult to evict them. There was no document of title. It became difficult to convince the trespassers to vacate. The fifth defendant suggested that some title deed had to be created in order to protect the properties. The fifth defendant brought about a settlement deed dated 18.07.2005 as if executed by 2nd defendant in favour of the first defendant. The settlement deed is registered but the settlement deed was invalid. It was void. i

7. Soon after the settlement deed, the first defendant was contemplating going to Saudi Arabia. Therefore, the fifth defendant took a power of Attorney deed in his favour from the first defendant. It is dated 15.03.2006 and is registered. Therefore, the fifth defendant became the power of attorney agent of first defendant. He used the settlement deed and the power of attorney deed. Armed with the documents, he convinced the trespassers one by one and made them to vacate the properties encroached upon by them.

8. The fifth defendant has settled all the 'B' schedule properties upon the third defendant by means of a settlement deed dated 05.05.2017. The settlement deed has been the result of fraud and collusion between defendants 3 and 5. This has been secretly planned and brought about to defraud plaintiffs and defendants 1 and 2. The name of the 3rd defendant has been altered. Now, that the facts have come to light, plaintiffs are compelled to file this suit for administration of the estate of deceased Mohamed Meeran by partitioning the properties in 'B' schedule.

9. The issue with regard to limitation is the mixed question of fact and law. Perusal of the plaint shows that there are enough grounds made and cause of action available for the institution of the suit. Therefore, this Court is not inclined to entertain this Civil Revision Petition and this Civil Revision Petition is dismissed giving liberty to the petitioner to file, if so advised, an application under Order VII and Rule 11 of the Civil Procedure Code, before the learned District Judge, Cuddalore for rejection of plaint.



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10. This Civil Revision Petition is Dismissed accordingly.
No costs. Consequently, connected C.M.P.No.11556 of 2021 is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To:

1. The District Judge,
Cuddalore.
2. The Sub-Registrar,
Parangipettai,
Bhuvanagiri Taluk.
3. The Tahsildar
Bhuvanagiri Taluk,
Cuddalore District.
4. The Collector,
Cuddalore District,
Cuddalore.

+2cc to Mr.K.Moorthy, Advocate, S.R.No.37655, 37594

C.R.P.No.1470 of 2021

PM(CO)
CB(23/08/2021)