

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.3672 of 2014

1.Saraswathy Ammal
2.Ananakumar
3.Vijayalakshmi
4.Vijayaraj
5.Nandagobal

..Appellants/Petitioners

vs.

1.K.Nagaraj
2.Suseela
3.N.Karthikeyan
4.Udayakumar
5.Umaiyal
6.R.Natesan
7.Pradeep Kandasamy
8.The District Collector,
Coimbatore.

.. Respondents

PRAYER : Civil Miscellaneous Appeal filed under Order 43 Rule 1 (na) of C.P.C, to set aside the Fair and Final dated 23.12.2010 passed in P.O.P.No.351/2009 on the file of the Principal District Judge, Coimbatore District.

For Petitioner

: Mr.I.C.Vasudevan

For Respondent

: M/s.Shivani

for Mr.P.Valliappan

for RR1 to 4

Mr.Jeganathan

Government Advocate (CS)

for R8

O R D E R

The Fair and Decreetal Order dated 23.12.2010 passed in P.O.P.No.351 of 2009 is under challenge in the present Civil Miscellaneous Appeal.

2. The petitioners instituted a suit for declaration to declare that the sale deeds executed by the plaintiffs in favour of the second respondent is to be cancelled and for a consequential declaration. Along with suit, the petitioners filed P.O.P.No.351 of 2009 seeking permission of the Court to institute the pauper suit under Order 33 Rule 1 of C.P.C. The Trial Court adjudicated the issues and formed an opinion based on the evidence that the petitioners are cultivating banana and

paddy crops in the suit property and deriving sufficient income. It was admitted by P.W.1 that there are about 70 coconut trees in the suit property. Thus, the trial Court arrived a conclusion that the petitioners are having sufficient income from the coconut trees and capable of paying the Court fee for institution of civil suit. Considering the documents as well as the deposition of P.W.1, the Trial Court arrived a conclusion that the petitioners are having sufficient means to pay the Court fee and accordingly, the Pauper Original Petition was dismissed.

3. The learned counsel appearing on behalf of the petitioner made a submission that the suit property cannot be taken into consideration for the purpose of considering an application under Order 33 Rule 1 of C.P.C. The petitioners are not having sufficient means to pay the Court fee. Thus, the trial Court has committed an error.

4. Undoubtedly, if it is a dry land, the Court can consider. But the evidence produced before the trial Court reveals that the suit property is a fertilizer land and the petitioners are cultivating banana and paddy crops. Apart from the fact that, 70 coconut trees are in the land. When it is an cultivating land and the petitioners are deriving income from and out of the said land, then they cannot be declared as pauper under Order 33 Rule 1 of C.P.C.

5. This being the factum, the trial Court has rightly considered the evidence and documents and dismissed the petition. This Court does not find any infirmity with reference to the findings of the trial Court. Accordingly, the Fair and Decreetal Order dated 23.12.2010 passed in P.O.P.No.351 of 2009 stands confirmed and the Civil Miscellaneous Appeal stands dismissed. The petitioners are permitted to pay the Court fee within a period of four weeks from the date of receipt of a copy of this Order. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Principal District Judge, Coimbatore District.

+1cc to Mr.I.C.Vasudevan, Advocate SR.NO..3200

+1cc to The Special Government Pleader SR.NO..2886

+1cc to Mr.P.Valliappan, Advocate SR.NO..3722

AKM/29.04.21/2P-5C/

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