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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2021

CORAM :

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P.NO.2112 OF 2021

AND

C.M.P.NOS.16098 & 16100 OF 2021

K.Senthilkumar

... Petitioner/
4th Defendant

Vs

1.M.Mohankumar

... 1st Respondent/
Plaintiff

2.P.R.Rajan

3.D.Saroja

4.R.Vennila

5.S.Senthilkumar

... Respondents 2 to 5/
Defendants 1 to 3 & 5

PRAYER :

Civil Revision Petition filed under Article 227 of the Constitution of India praying to pass an order to strike off the plaint in O.S.No.204 of 2020 pending on the file of the Hon'ble Additional District Sessions Judge for FTC - I, Salem.

For Petitioner : Mr.V.Arunagiri.

O R D E R

This Civil Revision Petition is filed to strike off the plaint in O.S.No.204 of 2020, pending on the file of the Learned Additional District Sessions Judge, Fast Track Court - I, Salem.

2.O.S.No.204 of 2020 was filed by the First Respondent herein as a Plaintiff against the Defendants seeking the relief of partition of suit property into two equal shares and allotment of one such share, for declaring the partition deed dated 26.04.1982 entered into between the first defendant and his brother Duraisamy in document No.2122 of 1982 registered before the Sub-Registrar Office at Vazhapadi as null and void, for declaring sale deed dated 10.07.2020 executed by the second and third defendant in favour of the fourth and fifth defendants



in document No.2136 of 2020 registered before the Sub-Registrar office, Vazhapadi as null and void and for the relief of permanent injunction and for passing final decree.

3.It is gathered from the submissions made by the Learned Counsel for the Petitioner that the Suit property was originally purchased by one Muthayee and Pavayee, who were the wives of one Ramasamy Gounder and his wives Muthayee and Pavayee died. Muthayee has P.R.Rajan and Duraisamy Gounder as her sons. Pavayee has Susila as daughter. All of them are now dead. The Plaintiff is the son of Susila. Duraisamy Gounder has a son Raja. Saroja is the second Defendant and Vennila, the 3rd defendant is the daughter of Duraisamy Gounder.

4.It is the case of the Learned Counsel for the Petitioner that P.R.Rajan and Duraisamy Gounder had entered into partition even in the year 1982. Now, it is not open to the First Respondent / Plaintiff to challenge the said partition deed and subsequent sale deed. It is seen from the submission that admittedly, Plaintiff was born and alive, when P.R.Rajan and Duraisamy Gounder had entered into the partition deed dated 26.04.1982. Without involving the legal representatives of one co-owner namely Pavayee, legal representatives of other co-owner namely Muthayee, had entered into a partition deed dated 26.04.1982.

5.It is seen from the plaint pleading that the First Respondent / Plaintiff claims right in the property as the legal representative of his mother Susila who is the legal heir of Pavayee. We cannot now decide the claim of the first respondent/plaintiff has no basis. He claims right in the property as the legal heir of his mother Susila, who is the daughter of one of the co-owners of the property, namely Pavayee. His claim is required to be adjudicated only on considering the evidence, oral and documentary, to be produced in the course of trial. He has a right to make this claim under Section 15 of Hindu Succession Act. The issue involved in this case involves mixed question of fact and law. Therefore, the first respondent cannot be thrown out of this case at the threshold. He must be given an opportunity to proceed with his case and it is for the respondent/defendant to contest the case. There is a cause of action for instituting the suit.

6.In the considered opinion of this court, this case is not barred by any law. In this view of the matter, this court is not inclined to accept the prayer for striking off the plaint and the prayer is rejected.



7. Resultantly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ay/ep

To

The Additional District Sessions Judge,
Fast Track Court - I,
Salem.

C.R.P.No.2112 of 2021
and
C.M.P.Nos.16098 & 16100 of 2021

NRJK (CO)
PM/28/10/2021