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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP NOS.2754 & 2755 OF 2021

AND

CMP.NOS.20102 & 20105 OF 2021

AND

CAVEAT NO.4473 OF 2021

D.Muthunarayanan

... Petitioner in both CRPs

Vs

1.T.D.Ravindran
2.T.K.Devanathan Reddiar
3.N.Gowri
4.C.Lalitha
5.R.Amarajothi
6.M.Revathi
7.Priyadarshini
8.Preethika
9.Karunandham

... Respondents in both CRPs

(R9 represented by his Power Agent Rajendra Prasad)

(R2 to R9 are given up)

Prayer in CRP.No.2754 of 2021: Civil Revision Petition filed under Article 227 of the Constitution of India against the order passed in I.A.No.24 of 2021 in O.S.No.149 of 2018 dated 06.10.2021, on the file of the Special Court for trial of cases under the SC/ST (Prevention of Atrocities) Act, Cuddalore and prays to set aside the same.

Prayer in CRP.No.2755 of 2021: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to strike off the plaint in O.S.No.149 of 2018 on the file of the Special Court for trial of cases under the SC/ST (Prevention of Atrocities) Act, Cuddalore.

For Petitioner (In both CRPs)	:	Mr.A.K.Kumarasamy Senior Counsel for Mr.S.Kaithamalai Kumaran
For Caveator (In CRP.2754/2021)	:	Mr.Gururaj for M/s.D.Baskar



COMMON ORDER

Heard Mr.A.K.Kumarasamy, learned Senior Counsel appearing for the petitioner in both the revisions.

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2.CRP.No.2754 of 2021 is against an order made in I.A.No.24 of 2021 in O.S.No.149 of 2018, an application seeking rejection of the plaint under Order 7 Rule 11 of the Code of Civil Procedure. The plaintiff/first respondent herein filed a suit for partition and separate possession of his 1/4th share in the suit 'B' schedule property, claiming that the suit property remained undivided.

3.The suit is being resisted by the defendants, who are his father and siblings contending that there was a partition in the family on 04.03.1996 and the plaintiff being a party to the same is not entitled to maintain the present suit for partition. Even though the plaintiff did not disclose the said partition in the original plaint. In his counter to the application filed under Order 7 Rule 11 of CPC, the plaintiff had contended that the partition of the year 1996 was not acted upon and it is sham and nominal document created for the purpose of another suit. The trial Court dismissed the application on the conclusion that the issue as to whether there was a partition or not, will have to be decided by the Court only after evidence is let in and the same cannot be a ground for rejection under Order 7 Rule 11 of CPC. Hence these revisions.

4.In CRP.No.2755 of 2021, the petitioner, who is the third defendant in the suit seeks the extraordinary remedy of striking of the plaint on the very same ground that was urged in the application under Order 7 Rule 11 of CPC.

5.Mr.A.K.Kumarasamy, learned Senior Counsel would submit that since there had been a partition of the property belonging to the family on 04.03.1996, the present suit for partition is an abuse of process of Court and the same will have to be rejected.

6.I am unable to concur with the contention of the learned counsel. The plaintiff has come forward with the suit for partition and he has raised the contention that the earlier partition deed is sham and nominal. The question whether the earlier partition deed is valid or not will have to be decided in the suit after evidence is let in. The validity or otherwise of the document cannot be a subject matter of rejection of the plaint under Order 7 Rule 11. Hence, I am unable to find fault with the trial Court for having dismissed the application.



7. The same reasoning would apply to the Revision under Article 227 of the Constitution of India seeking striking off the plaint. In a suit for partition, if the defence is taken that there has been a partition, the said defence has to be tested on evidence. The Court cannot reject the plaint on the basis of the defence under Order 7 Rule 11. Hence, both the revisions fail and they are accordingly dismissed. Considering the fact that the suit is of the year 2018, the trial Court is required to dispose of the suit on or before 30.04.2022. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

vs

To:

The Special Court for trial of cases
under the SC/ST (Prevention of Atrocities) Act,
Cuddalore.

+1cc to M/s.D.Baskar, Advocate, S.R.No.67405

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.66852

CRP Nos.2754 & 2755 of 2021 and
CMP.Nos.20102 & 20105 of 2021 and
Caveat No.4473 of 2021

RLD(CO)
RLP(07/01/2022)