

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.4456 of 2019

C.M.P.Nos.25279 & 25281 of 2019

1.K.V.P.Bhoominathan

2.B.Thenmozhi

..Appellants/Respondent 5/
Defendants 1 & 3

Vs.

1.D.Ramesh

2.Devana Kangeya Gounder

..Respondents/Appellants/
2nd Respondent/Plaintiff/
1st Defendant

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) of CPC, to set aside the decree and judgment dated 21.08.2019 on the file of the III Additional District and Sessions Judge, Dharapuram and passed in A.S.No.32 of 2013 reversing (remand back) the decree and judgment dated 03.08.2012 and made in I.A.No.856 of 2011 in O.S.No.177 of 2011 on the file of the Sub-ordinate Court, Dharapuram.

For Appellant : M/s.S.Sasikala

For Respondents : No-appearance

J U D G M E N T

The Judgment and Decree dated 21.08.2019 passed in A.S.No.32 of 2013 is under challenge in the present Civil Miscellaneous Appeal.

2. The suit was instituted by the first respondent in the present appeal for partition. The suit for partition is filed on the ground that the first respondent/plaintiff is having a right over the property. The appellant herein filed an interlocutory application in I.A.No.856 of 2011 for rejection of plaint under Order VII Rule 11 (d) r/w 151 of C.P.C. The Trial Court allowed the interlocutory application in favour of the appellants herein and rejected the plaint mainly on the ground that the suit is barred by limitation and filing the suit straight away for partition and recovery of ½ of the suit properties is not maintainable without filing a suit for declaration to set aside the sale deeds. The findings of the trial Court are that the first respondent in the interlocutory application has so far not filed any suit to cancel the sale deeds executed by his father.

Thus, the suit is not maintainable. Accordingly, the plaint was rejected. Challenging the said order, the first respondent/Mr.D.Ramesh filed an appeal in A.S.No.32 of 2013 and the first Appellate Court has elaborately considered the facts and circumstances in its judgment.

3. The crux of the findings of the first Appellate Court is that the interlocutory application was filed under Order VII Rule 11 of CPC to reject the plaint filed by the first respondent for partition. The provision of Order VII Rule 11 of C.P.C. was extracted by the first Appellate Court in its judgment. The first Appellate Court arrived a conclusion that the grounds on which the plaint was rejected by the trial Court should not falling under the provisions of Order VII Rule 11 of C.P.C. Therefore, those grounds are to be adjudicated on merits by the parties during the trial.

4. This Court is of the considered opinion that when a petition to reject the plaint is filed under Order VII Rule 11 of C.P.C, then the Courts are expected to find out whether the ingredients enumerated in Order VII Rule 11 of C.P.C are met out or not. In other words, the plaint can be rejected, if the grounds raised by the parties are falling within the ambit of Order VII Rule 11 of C.P.C and not otherwise. If at all the other grounds raised regarding the maintainability of the suit, those grounds are to be adjudicated by the trial Court at the time of deciding the suit and on those grounds, plaint cannot be rejected. It is not as if the plaint can be rejected at the initial stage in respect of the other grounds raised in the parties beyond the scope of Order VII Rule 11 of C.P.C. The Courts are confined to decide the petition to reject the plaint strictly within the scope of Order VII Rule 11 of C.P.C and another grounds raised are to be adjudicated with reference to the documents and evidence placed to the litigations. In the event of rejecting the plaint on the other ground, undoubtedly, the same would cause prejudice to the rights of the parties concerned. Therefore, it is necessary that the grounds rejection for the plaint raised by the parties are to be strictly considered with reference to the grounds set out in Order VII Rule 11 of C.P.C and not otherwise. In the present case, the trial Court allowed Interlocutory Application filed by the appellant mainly on the ground of limitation and further, on the ground that the relief for partition is not maintainable as the first respondent has not filed any suit to cancel the sale deed executed by his father. Those grounds are to be adjudicated by the parties in a trial and on the basis of those grounds, plaint cannot be rejected, more specifically, by invoking the provision of Order VII Rule 11 of C.P.C. Thus, the trial Court has committed an error in allowing the petition and the first Appellate Court has rightly set aside the judgment of the trial Court on the ground that the grounds relied on by the trial

Court is not in consonance with the provision enumerated in Order VII Rule 11 of C.P.C.

5. This Court is of the considered opinion that the first Appellate Court has rightly arrived a conclusion and there is no perversity or infirmity as such. The parties are bound to adjudicate the issues with reference to the documents and evidence available and the suit is to be decided on merits by affording opportunity to all the parties concerned. However, the trial Court is directed to dispose the suit as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this Order. The parties to the suit are directed to co-operate for earlier disposal of the suit and the parties are restrained from taking unnecessary adjournments before the trial Court. The trial Court must record the reason for adjournments and all unnecessary adjournments on flimsy grounds are liable to be rejected.

6. With these observations, the Civil Miscellaneous Appeal stands dismissed. Consequently, connected miscellaneous petitions are also closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

ssb

To

1.The III Additional District and Sessions Judge, Dharapuram.

2.The Sub-ordinate Court, Dharapuram

+1 cc to M/s.S.Sasikala Advocate sr107

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