



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.04.2021

Pronounced on : 08.06.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.MD).No. 569 of 2021 and

CMP(MD).No.3072 of 2021

Ramuthai (died)

1.Ramuthai

2.Palaniammal

3.Thirumalaiammal

4.Sarasu @ Kanagarani

: Petitioners / defendants

Vs.

Mookayee @ Pappammal (died)

1.Subbammal

2.N.Rajamani

3.Vellathai

4.Sivagami

: Respondents / plaintiffs

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 17.02.2020 passed in I.A.No.613 of 2018 in O.S.No. 758 of 2017 on the file of Additional Subordinate Judge, Dindigul.

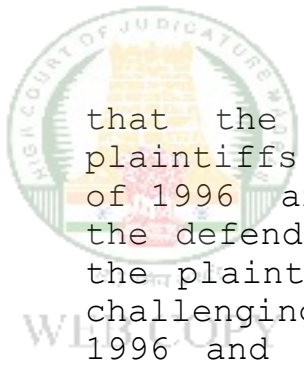
For petitioners : Ms. S. Vijayashanthi

ORDER

This revision is directed against the order dated 17.02.2020 passed in I.A.No.613 of 2018 in O.S.No. 758 of 2017 on the file of Additional Subordinate Court, Dindigul dismissing the petition filed under Order 7 Rule 11 CPC for rejection of the plaint.

2. The revision petitioners are the defendants and the respondents / plaintiffs have filed the above suit for partition and allotment of 2/7 shares in the suit properties alleging that the properties were belonging to their deceased father Sundaramoorthi.

3. It is not in dispute that the plaintiffs father Sundaramoorthi had two wives viz., Pemmammal @ Perumayeeammal and the first defendant Ramuthayee. It is also not in dispute



that the defendants 1,4 and 5 filed the suit against the plaintiffs' mother and others claiming partition in O.S.No. 1501 of 1996 and after trial, the preliminary decree was passed, that the defendants have preferred an appeal in A.S.No. 8 of 2003 and the plaintiffs have preferred an appeal in A.S.No. 136 of 2000 challenging the Judgment passed in the suit in O.S.No. 1501 of 1996 and that the common Judgment was pronounced in both the appeals. The main contention of the revision petitioners is that the suit property shown in the Items Nos.7,10,11,12,15 and 16 and some other properties were the suit properties in the earlier proceedings and that since the dispute with respect to those properties was already decided in the appeals, the present suit with respect of the same properties is not maintainable and that therefore, the plaint is liable to be rejected.

4. It is pertinent to mention that the respondents have filed the above suit in O.S.No.758 of 2017 with respect to 23 items of the properties. Even according to the revision petitioners, the earlier suit proceedings were with respect to Item Nos. 7,10,11,12,15 and 16 of the present suit properties. As rightly observed by the trial Court, the plaint cannot be rejected in part or in respect of the some of the properties.

5. The learned counsel appearing for the petitioners would submit that the suit with respect to the above said properties was barred by the doctrine of *res judicata*. It is pertinent to mention that the plea of the *res judicata* is not a ground for rejection of the plaint and the said doctrine has to be gone into only at the trial.

6. The revision petitioners have not shown any other reason or ground contemplated under Order 7 Rule 11 CPC for rejecting the plaint. Hence, the decision of the trial Court in dismissing the petition filed under Order 7 Rule 11 CPC cannot be found fault with and consequently, this Court is not inclined to admit the revision.

7. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS II)

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/ /2021

Sub Assistant Registrar (CS)



The Additional Subordinate Judge, Dindigul.

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CMP (MD) .No.3072 of 2021
08.06.2021**

AS (05.07.2021) 3P 2C