



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.04.2021

Pronounced on : 29.04.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

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C.R.P.(MD) .No.664 of 2021

and

C.M.P (MD) .No.3604 of 2021

- 1.Kamaraj
2.Alli
3.Kannan :Petitioners/Petitioners/ 1 to3 Defendants
Vs.
1.Ganapathy Nadar :1st Respondent/ 1st Respondent/Plaintiff

2.The Sub Registrar,
Vickramasingapuram,
Ambasamudram Taluk,
Tirunelveli.

3.The District Collector,
Tirunelveli. :2 & 3 Respondents/2 to 3 Respondent/
4th & 5th Defendants

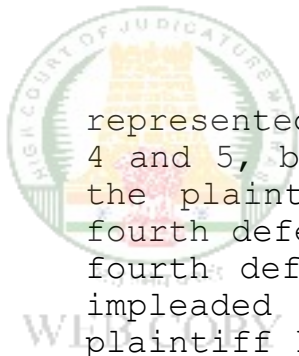
PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 13.03.2021 passed in I.A.No.3 of 2021 in O.S.No.102 of 2020 on the file of the Subordinate Court, Ambasamudram.

For petitioners : Mr.S.Vashik Ali

ORDER

The Civil Revision Peition is directed against the order passed in I.A.No.3 of 2021 in O.S.No.102 of 2020, dated 13.03.2021 on the file of the Subordinate Court, Ambasamuthuram.

2.The revision petitioners are the defendants 1 to 3 in O.S.No.102 of 2020 on the file of the Subordinate Court, Ambasamuthiram. The first respondent/plaintiff has filed the suit in O.S.No.102 of 2020 for partition claiming half share in the suit property and for permanent injunction restraining the defendants 1 to 3, who are the revision petitioners herein, from alienating or encumbering the suit property. The revision petitioners filed a petition under Order 7 Rule 11 of the Code of Civil Procedure for rejecting the plaint mainly on the ground that the plaintiff had not spelled a single word about Section 80 of CPC in the plaint. It is evident from the records that the plaintiff has added the Sub-Registrar, Vikramasingapuram and the Government of Tamil Nadu,

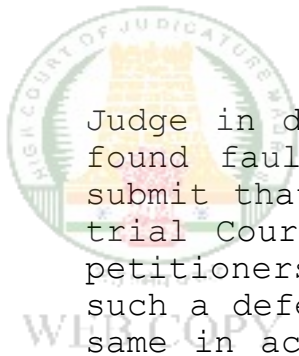


represented by the District Collector, Tirunelveli as the defendants 4 and 5, but admittedly, no relief is claimed against them. Even in the plaint, the plaintiff has stated that in order to bind the fourth defendant with the judgment to be pronounced in the suit, the fourth defendant has been added and the fifth defendant has been impleaded as a formal party. It is further evident that the plaintiff has filed an application in IA.No.1 of 2020 under Section 80(2) of CPC to dispense with the notice under Section 80 CPC and the same was allowed by the learned Subordinate Judge, Ambasamudram and thereby, the leave under Section 80(2) of CPC was granted.

3.No doubt, as rightly pointed out by the revision petitioners, the plaintiff in his plaint has nowhere stated about the proceedings under Section 80 of CPC and the filing of the petition under Section 80(2) CPC. As rightly observed by the learned Subordinate Judge, the plaintiff has not filed the above suit only against the Government authorities but, mainly against the revision petitioners claiming the relief of partition. As already pointed out, no relief is claimed against the defendants 4 and 5 and it is the sepcific case of the plaintiff that they were added as formal parites. It has become a fashion in impleading the government officials as formal parties to the suits by simply alleging that to impute the knowledge about the filing of the suit and the judgment to be pronounced to the government officials, they are being added. Generally if a government official is added, on receipt court summons or notice, he has to obtain necessary permission from Head of the department; then he has to contact the concerned Govt.Pleader or engage an Advocate; he has to go to the office of govt. Pleader for giving instructions and then for preparing pleadings; deputing court-clerk or any other staff to attend the court on hearing dates and so on and that thereby consuming much of govt money and time but with no purpose. Hence the practice of impleading govt officials as pro forma parties is to be deprecated.

4.More over, it is settled law that the plaint cannot be rejected in part. As rightly pointed out by the plaintiff side in the trial Court, the Hon'ble Apex Court in **Sejal Glass Ltd., Vs., Navilan Merchants Private Limited in Civil Appeal No.10802 of 2017 dated 21.08.2017**, has held that "It was only on the peculiar facts of that case that want of Section 80 of CPC against one defendant led to the rejection of the plaint as a whole, as no cause of action would remain against the other defendants. This cannot elevate itself into a rule of law, that once a part of a plaint cannot proceed, the other part also cannot proceed, and the plaint as a whole must be rejected under Order VII Rule 11. In all such cases, if the plaint survives against certain defendants and/or properties, Order VII Rule 11 will have no application at all, and the suit as a whole must then proceed to trial."

5.Considering the above, the decision of the learned trial
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Judge in dismissing the petition for rejection of plaint cannot be found fault with. The learned counsel for the petitioners would submit that, in case, if the Court is not accepting their stand, the trial Court may be directed to frame an issue with respect to the petitioners' plea under Section 80 of CPC and decide the same. If such a defence is taken, the trial Court is required to consider the same in accordance with law. In view of the above discussion, this Court is not inclined to admit the revision.

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

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

rmk/das

To

1. The Subordinate Judge,
Ambasamudram.
2. The Sub Registrar,
Vickramasingapuram,
Ambasamudram Taluk,
Tirunelveli.
3. The District Collector,
Tirunelveli.

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-18186[F] dated 30/04/2021)

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CMP(MD).No. 3604 of 2021

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