



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) No.544 of 2020

and

C.M.P. (MD) No.3401 of 2020

WEB COPY

1.Mannan Mohammed
2.Saleema
3.A.M.Madhu
4.Vahitha Banu

.. Petitioners/Petitioners/
Defendants 3, 5 to 7

-vs-

1.Meera Sahib
2.Subaitha Begum
3.Sithi Parithal
4.Basheer Ahamed

.. 1st Respondent/
1st Respondent/Plaintiff

.. Respondents 2 to 4/
Respondent 2 to 4/
Defendants 1, 2 & 4

Prayer :- Petition filed under Article 227 of the Constitution of India to set aside the fair and decree dated 23.01.2020 made in I.A.No.1 of 2019 in O.S.No.185 of 2018 on the file of 3rd Additional District Court, Tirunelveli District.

For Petitioners : Mr.A.Arumugam
For R1 : Mr.R.Mohana Sundaram
For RR3 & 4 : Mr.A.Nawaz Khan

ORDER

The revision petitioners are defendants 3 and 5 to 7, who have taken out an application in I.A.No.1 of 2019 to reject the plaint in O.S.No.185 of 2018 on the file of the III Additional District Judge, Tirunelveli.

2. The facts, to give a brief insight into the circumstances, which have led to the filing of the application for rejecting the plaint, are as follows:-

2.1. The 1st respondent herein had instituted a suit for a permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit properties.

3. The suit properties originally belonged to one Mariya Mysira, mother of the petitioners and respondents 1, 3 and 4. The 1st respondent would claim a right to the property on the basis of an



oral gift in his favour by defendants 2 to 7 on 15.05.1990. The mother had passed away on 07.06.2011.

4. The petitioners herein, immediately on receiving summons in the above matter, had taken out an application for rejecting the plaint, since the cause of action pleaded by the 1st respondent herein was a false one. The suit filed by the 1st respondent was on the basis that the petitioners and respondents 3 and 4 had gifted their share to him on 15.05.1990.

5. The petitioners would submit that the gift deed, which appears to be a collusive one, has been made even prior to the death of the mother and before the property devolved on the petitioners as well as respondents 1, 3 and 4.

6. This application was resisted by the 1st respondent *inter alia* contending that in the case of rejection of a plaint, the Court shall look into the contents of the plaint and none else. He would further submit that the petitioners and respondents 3 and 4 had received money in lieu of their share and granted an oral Hiba in favour of the 1st respondent.

7. The petitioners would contend that the very execution itself was a false one, since the property cannot be shared by the petitioners and respondents 1, 3 and 4 when the mother, the owner of the property, is alive.

8. The learned III Additional District Judge, Tirunelveli, however, was not inclined to allow the application on the ground that in a suit for permanent injunction, it is not required that the parties produce documents to establish title. It would suffice if they are able to prove possession of the property. Once possession is proved, they are entitled to protection even if they are trespassers and the lawful owner can evict them only in the manner known to law. For these reasons, the application to reject the plaint was rejected. Challenging the same, the revision petitioners are before this Court.

9. Mr.A.Arumugam, learned counsel appearing for the petitioners would put forward the only contention that the cause of action for filing the suit and the basis on which the plaintiff claims right to the suit property is an oral Hiba executed by the petitioners and respondents 3 and 4 in favour of the 1st respondent. Admittedly, the property belonged to the mother Mariya Mysria, who passed away only on 07.06.2011 whereas, the 1st respondent would plead an oral Hiba on 15.05.1990 much before the death of the mother, which is a collusive one and prays for rejection of the plaint.

10. Learned counsel for the 1st respondent would submit that the petitioners and respondents 3 and 4 had received money in lieu of



their share and granted an oral Hiba in favour of the plaintiff.

11. Heard the learned counsel for the parties and perused the records.

12. The cause of action for the suit is the Hiba dated 15.05.1990, said to have been executed by the petitioners and respondents 3 and 4 much before the death of the mother and no right could flow under this deed when the owner of the property is alive. Admittedly, the properties belonged to the mother. The mother passed away only on 07.06.2011 and only then succession would open, however, the 1st respondent would plead that he has been put in possession of the suit property pursuant to the above referred Hiba. This Court is of the opinion that once it appears that the suit does not disclose any cause of action, the suit deserves to be rejected.

13. In the result, this Civil Revision Petition is allowed, the order dated 23.01.2020 passed by the learned III Additional District Judge, Tirunelveli, in I.A.No.1 of 2019 in O.S.No.185 of 2018 is set aside and the suit in O.S.No.185 of 2018 is rejected. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

abr

Note:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

The III Additional District Court,
Tirunelveli.

+1 CC to M/s.A.ARUMUGAM, Advocate (SR-39174[F] dated 16/12/2021)

C.R.P. (PD) (MD) No.544 of 2020

Dated: 14.12.2021

PS (CO)

KB(24.01.2022) 3P 3C