



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.10.2021

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THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P(PD) (MD) No. 2210 of 2014

and

M..P(MD) No.1 of 2014

M.Perumal Naicker

...Petitioner

Vs.

1. Gangamani @ Gangammal
2. Ellammal
3. Akkammal
4. Muthulakshmi

...Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 14.07.2014 in I.A.No. 178 of 2012 in O.S. No. 38 of 2012 on the file of the Additional Sub Judge, Karur.

For Petitioner	: Mr.K.Govindarajan
For Respondent	:
No.1	: Mr. K.Suresh for Mr.E.K.Kumaresan
No.3& 4	: No appearance

O R D E R

The Civil Revision Petition has been filed to set aside the order dated 14.07.2014 in I.A.No. 178 of 2012 in O.S. No. 38 of 2012 on the file of the Additional Sub Judge, Karur.

2. The learned counsel for the petitioner would submit that the petitioner is the fourth defendant in O.S.No.38 of 2012 filed for partition. The first respondent/plaintiff has filed the vexatious suit for partition as if he has got right of partition in respect of item 1 and 3 suit properties which were purchased by the petitioner by Court auction and it could not be brought in for partition, thereby the petitioner had filed petition under Order 7 Rule 11 of the Code of Civil Procedure to dismiss the suit partially in respect of item 1 and 3 which were exclusively owned by the petitioner, whereas the Trial Court had dismissed the same stating that the matter can be decided only after full fledged trial, thereby the present petition has been filed seeking to set aside the order.

3. The learned counsel for the 1st respondent would submit that the Trial Court rightly finding that the petition cannot be



filed for partial rejection of plaint has rightly dismissed the petition. He would further submit that Trial Court has also held that it is a matter for evidence.

4. At this juncture the learned counsel for the petitioner would submit that it is the case of the revision petitioner that item Nos 1 and 3 of the suit properties are exclusive properties purchased by him individually in a Court auction and it cannot be brought for partition. If there is a dispute over the inclusion of the properties contending that those properties are individual properties not available for partition, then the Court is bound to decide it as a preliminary issue as to whether the properties are available for partition. He would thereby pray that a direction may be issued to the Trial Court to take that as a preliminary issue and decide it before trial, so that the petitioner need not undergo ordeal of trial in respect of his individual properties. He would also submit that the petitioner has not filed any written statement yet and as and when written statement is filed the issue of inclusion of the property shall be taken up as a preliminary issue.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. The petition has been filed seeking to partially reject the plaint. The Trial Court finding that the Court has no powers to partially reject the plaint and also finding that the scope and enquiry at the stage deciding the application under Order 7 Rule 11 of the Code of Civil Procedure has to be limited only to the pleading in the plaint and not on the averment made by the defendants had rejected the petition.

7. In **Kuldeep Singh Pathania .vs. Bikram Singh Jaryal** reported in (2017) 5 SCC 345, the Hon'ble Apex Court has held that at the time of deciding petition under Order 7 Rule 11 of the Code of Civil Procedure the Court has to take into consideration the pleadings in the plaint and not the averments in the written statement. Further in **N.Mohan .Vs. P.Govindasamal** reported in 2019 Scc online Madras Page 10107 the Court has held that partial rejection of plaint is not permissible. However, it is the case of the petitioner that item nos. 1 and 3 are suit properties are his individual properties and that they cannot be included in the suit for partition.

8.This Court is of the opinion that when there is a dispute over inclusion of properties belonging to the parties the issues has to be taken up as a preliminary issue under Order 14 Rule 2(2) of the Code of Civil Procedure.

9.In view of the above, the petitioner is directed to file written statement and on such written statement being filed, the Trial Court shall decide the issue whether the suit properties item nos. 1 and 3 can be brought for partition or not as a preliminary issue and thereafter continue the case.



10. With the above observation, the Civil Revision Petition stands disposed of. No costs. Consequently connected miscellaneous petition is also closed. Since the suit is of the year 2012, there shall be a direction to the Trial Court to complete the trial as expeditiously as possible.

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Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 Additional Sub Judge,
Karur.

+1 CC to M/s.K.GOVINDARAJAN, Advocate (SR-32764[F] dated 27/10/2021)
C.R.P(PD)(MD) No. 2210 of 2014

and
M..P(MD) No.1 of 2014

26.10.2021

VR(CO)

GC/JC(12.11.2021) 3P 3C