



C. R.P.(PD).No.359 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2022

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.359 of 2022

and

C.M.P.No.1860 of 2022

1.N.Pitchai
2.Kanniappan
3.Poongavanam ...Petitioners/Petitioners/Defendants 1 to 3

-V-

1.V.Ravi Kumar
2.V.Rajan ...Respondents/Respondents/Plaintiffs
3.Kaniyaakumari
4.Miss. V.Lakshmi ...Respondents/Respondents/Defendants 4 & 5

Prayer: Petition filed under Section 115 of the Code of Civil Procedure against the Fair and Decretal order dated 05.10.2021 passed in I.A.No.3 of 2021 in O.S.No.51 of 2020 on the file of the learned XVII Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.V. Haribabu



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ORDER

Challenging the dismissal of their application for rejecting the
plaint, the defendants 1 to 3 are before this Court.

2.The facts in brief are as follows:

The plaintiffs had filed the suit for a Partition and separate possession of their $\frac{1}{2}$ share in the suit schedule properties. The plaintiffs are the sons of Varadhan and the defendants are the legal representatives of Narayanan. The case of the plaintiff is that Varadhan and Narayanan were the sons of one Raja Gounder who was in occupation of the suit schedule property wherein he had put up a hut bearing D.No.6, 2nd Street, Ramakrishnapuram, Mylapore, Chennai, which measured nearly 600 sq.ft. After the death of Raja Gounder, the property devolved on his two sons and thereafter, the two brothers had also passed away leaving behind them surviving the plaintiffs and the defendants. Since there was no possibility of



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continuing to be joint the plaintiffs had come forward with the suit for partition. The patta in respect of the property had been issued in the joint name of Narayanan and Varadhan. The defendants had not come forward to partition the suit property hence, the suit.

3.As the summons was issued the defendants 1 to 3 had come forward with the impugned petition. They sought to have the suit rejected on the ground that it is vexatious and without merits and that illusory cause of action has been set out. They further contended that the revenue records are not documents of title and the same has been pleaded only to show a ground which gives some semblance of merits to the case of the plaintiff. This application came to be dismissed by orders dated 05.10.2021 in I.A.No3 of 2021 on the file of the learned XVII Additional Subordinate Judge, Chennai. Challenging this order, the revision petitioners 1 to 3 are before this Court.



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4. Heard the learned counsel for the petitioners and perused the papers.

5. It has been time and again contended that while considering the application for rejecting the Plaint, the Court has to only peruse the contents of the plaint. The defendants would submit that the plaintiffs have filed any document of title whatsoever to show their right to the properties. This appears to be the primary ground for seeking the rejection of the Plaint. However, a perusal of the entire Plaint would show that the plaintiffs have contended that their grandfather had originally been in uninterrupted possession of the property and several years ago, he had put up a construction thereon and had been assessed to patta. Thereafter, on his demise, patta had been granted to his sons Narayanan and Varadhan and this patta has been filed by the plaintiffs as Document No.2 along with Plaint. Therefore, if the defendants are setting up a rival claim the same has



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to be proved through evidence. The Plaintiff cannot be rejected at the threshold. The learned Judge has rightly observed that a perusal of the Plaintiff establishes a cause of action and there is a tracing of title and that the ownership and possession are the matters which have to be proved during the trial. This Court also concurs with the observation made by the learned XVII Assistant Judge, City Civil Court, Chennai.

Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

17.02.2022

Internet : Yes/No
Index : Yes/No
Speaking / Non-Speaking
mps

To

The XVII Assistant Judge,
City Civil Court,
Chennai.



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P.T. ASHA, J,

mps

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