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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.R.P(PD)NO.504 OF 2022

AND

C.M.P.NO.2754 OF 2022

A.Kalimuthu

S/o.Arunachalam Valayan

...Petitioner

Versus

1.K.Ponnusamy

S/o.M.Kuppanda Gounder

2.K.Maruthachalam

S/o.M.Kuppanda Gounder

3.Vikki @ Vikkinraj

S/o.Rangasamy Valayar

...Respondents

PRAYER : The Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 10.01.2022 in I.A.No.1 of 2021 in O.S.No.1807 of 2015 on the file of IV Additional Subordinate Judge, Coimbatore.

For Petitioner : Mr.K.Prabhakaran

O R D E R

The Revision is preferred by the 1st defendant in O.S.No.1807 of 2015 on the file of the IV Additional Subordinate Court, Coimbatore, challenging an order of the learned IV Additional Subordinate Judge dismissing his application in I.A.No.1 of 2021, for rejection of the plaint under Order VII Rule 11 C.P.C.

2. A short note on the facts is now made with reference to three suits:

(a)The first of the suit is O.S.No.487 of 1991 on the file of Principal Sub Court, Coimbatore. This suit is laid for partition, in which Ponnusamy, Marudhachalam along



with another are the defendants. This suit was compromised, and both Ponnusamy and Marudhachalam referred to above have been allotted separate plots vide compromise decree dated 24.01.1992.

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(b) The second suit is O.S.No.282 of 2011 on the file of Sub Court, Coimbatore. This suit is between one Kalimuthu and Vikki alias Vikkinaraj. They claim title to 2.0 acres in S.No.369 in Kaduvampalaya Village in Coimbatore North Taluk, which incidentally is the subject matter in the earlier mentioned O.S.No.487/1991. In this suit, the plaintiff claim that the Survey No.369 originally had an extent of 3.76 acres, that it belonged to his great-grandfather Azhagan Valayan, that subsequent to his death, his descendants have sold 1.76 acres, and that the defendant belongs to another branch of Azhagan Valayan and seeks partition of this 2.0 acres. It appears that a preliminary decree has been passed, following which necessary application for passing a final decree has been taken out, in which, a Commission too has been appointed, and the Commissioner is also stated to have visited the property.

(c) The third suit is O.S.No.1807 of 2015 on the file of Sub Court, Coimbatore. This suit is laid by the aforesaid Ponnusamy and Marudhachalam against the parties to the second mentioned suit in O..No.282 of 2011 viz., Kalimuthu and Vikki, and were arrayed as defendants. The plaintiffs herein allege that they have been allotted separate plots in S.No.369, in the partition decree in O.S.No.487/1991, that the decree passed in the second mentioned suit in O.S.No.282 of 2011 is a collusive decree, and has sought for declaration of their title. The plaintiffs in this suit got themselves impleaded in O.S.No.282 of 2011 (second suit).

3.1 It is in this setting, the first defendant in O.S.No.1807/2015, the revision petitioner herein, took out an application in I.A.No.1 of 2021, for rejection of plaint, on the ground that inasmuch as the first plaintiff Ponnusamy has got impleaded in O.S.No.282/2011, vide order of the trial Court dated 03.01.2014 in I.A.No.580/2013, there is no cause of action to sustain O.S.No.1807/2015, without seeking a prayer to set aside the preliminary decree passed in O.S.No.282/2011. Secondly, the plaintiffs in O.S.No.1807/2015 have under-valued the suit property, wherein they have stated that the market value of the suit property is at Rs.1,50,000/-, whereas the guideline value of the property from 01.04.2012 to 08.06.2017 is at Rs.7,535/- per sq.ft., and if calculated for 2 acres, the total market value would be at Rs.6,57,052/-. Thirdly, they



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the Constitution, and accordingly this Civil Revision Petition stands dismissed at the admission stage itself. Consequently, the connected C.M.P.No.2754 of 2022 is also dismissed. No costs.

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Sd/-
Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

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To

The IV Additional Subordinate Judge
Coimbatore.

+1cc to Mr.K.Prabhakaran, Advocate Sr.No.14007

C.R.P (PD) No.504 of 2022
and C.M.P.No.2754 of 2022

SKM(CO)
RVM(13/06/2022)