



A.No.2270 of 2020
in
C.S.No.518 of 2019

P.VELMURUGAN.,J

This application has been filed by the applicant /first defendant to reject the plaint filed in C.S.No.518 of 2019 on the ground that no cause of action has arisen when the father of the plaintiffs is alive. Hence, she seeks rejection of plaint.

2. Learned counsel for the respondents/plaintiffs submitted that already the fourth defendant has filed an application to reject the plaint and this Court dismissed the application and held that the partial rejection cannot be permitted and he further submitted that the paternal grand mother has got a share in partnership. In the earlier suit, no dissolution and no partnership was ordered and no share was declared. Father of the plaintiffs colluded with the other defendants. Therefore, they filed the suit. Even during the life time of the father, they have a right to file the suit.

3. Heard and perused the materials available on records.



4. Admittedly, the respondents filed the suit for declaration declaring that the plaintiffs are the legal heirs of deceased Mrs.V.Kamalam and Mrs.V.Ambujam and also for partition.

5. The applicant has taken the main ground to reject the plaint on the ground that no cause of action has arisen, since the father of the plaintiffs is still alive and therefore, the succession has not been opened during the life time of the father.

6. Admittedly, the plaintiffs claim their right through paternal grandmother and great grandmother of the plaintiffs.

7. Admittedly, the father of the plaintiffs is still alive and the plaintiffs, though have not pleaded anywhere that the father colluded with other defendants and defeated the rights of the plaintiffs and there is no specific pleading in this regard. During the life time of father, succession would not be opened. It is contended by the learned counsel for the applicant/first defendant that no cause of action has arisen for the plaintiffs to file the suit.



8. It is a well settled proposition of law that at the time of deciding the application Under Order 7 Rule 11 C.P.C., the Court has to see the averments in the plaint and not the defence taken by the defendants. Therefore, on a reading of the averments in the plaint and also the documents annexed there with, this Court finds that the plaintiffs have no cause of action to file the suit. Therefore, the plaint is rejected and accordingly, the application is allowed. No costs.

07.03.2022

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