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C.R.P.No.1212 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

C.R.P.No.1212 of 2014
and M.P.No.1 of 2014

1.P.Ayyathal

2.P.Natarajan

3.P.Ramasamy

4.P.Krishnasamy

... Petitioners

Vs.

1.P.Arunachala Gounder

2.Vasanthamani

3.Vijayalakshmi

4.Poonkodi

5.V.Subramaniam

6.S.Sivakumar

7.S.Viswanathan



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8.C.Krishnasamy Gounder

9.K.Selvaraj

10.K.Ramakrishnan

11.S.Subramaniam

12.S.Sathivel

13.S.Padmavathi

14.V.Visalakshmi

15.V.Balasubramaniam

16.J.S.S. Arul Dass

17.R.Paramasivam

18.M/s.Nellai Muthu Vilas Sweets and Groups,
By its Proprietor, having office at
No.53, Ground Floor, Gandhipuram,
3rd Street Extension, 100 Ft. Road,
Coimbatore.

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Fair and Final order passed in I.A.No.849 of 2012 in O.S.No.599 of 2012 dated 20.09.2013 pending on the file of I Additional District Court, Coimbatore and allow the Civil Revision Petition.



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For Petitioners : Mr.S.Dhanasekaran

For Respondents : Mr.R.Krishnan for R1 to R7
Mr.C.S.K.Sathish for R13 to R15
No Appearance for R8 and R9

ORDER

This Civil Revision Petition has been filed by the plaintiffs challenging the fair and final order passed by the Court below in I.A.No.849 of 2012 in O.S.No.599 of 2012, dated 20.09.2013, whereby, the application filed by respondents 1 to 7/defendants 6 to 12 seeking for the relief of rejection of plaint was dismissed. But however, in the said application, the Court below invoked its jurisdiction under Order VI Rule 16 of C.P.C., and directed the deletion of Item Nos.2 and 3 from the schedule of properties and further directed the petitioners to carryout the necessary amendment in the plaint by filing an appropriate petition.

2.Heard Mr.S.Dhanasekaran, learned counsel appearing on behalf of the petitioners, Mr.R.Krishnan, learned counsel appearing on behalf of the respondents 1 to 7 and Mr.C.S.K.Sathish , learned counsel appearing on behalf of the respondents 13 to 15.



3.The petitioners filed a suit seeking for the relief of partition and for allotment of 2/3rd share in the suit properties and for a permanent injunction restraining defendants 1 to 3 from in any manner alienating or encumbering the suit property.

4.The defendants 6 to 12 filed an application under Order VII Rule 11 of C.P.C., seeking for the rejection of plaint on the ground that the suit is barred by the principles of *res judicata*. The Court below on considering the plea raised on either side, rejected the plea for rejection of plaint on the ground that there are disputed questions which involves consideration. However, the Court below proceeded to exercise its jurisdiction under Order VI Rule 16 of C.P.C., and directed the petitioners to remove items 2 and 3 from the schedule of properties and to file an appropriate application for that purpose.

5.The scope of an application under Order VII Rule 11 of C.P.C., is completely different from the scope of an application filed under Order VI Rule 16 C.P.C. The Court below found that the ground raised by the defendants 6 to 12 seeking for rejection of plaint is not sustainable, since the plea of *res judicata* can



be decided only on considering the evidence and dealing with the same as a specific issue. It is now a settled law that there is no scope for partially rejecting a plaint. The law on this issue has been settled by the Supreme Court in ***Madhav Prasad Agarwal v. Axis Bank Ltd.*** reported in **2019 4 CTC 721** Hence, even if the Court below wanted to reject the plaint insofar as two items of the suit properties concerned, the same could not have been done and the Court below rightly dismissed the application insofar as the claim for rejection of the plaint is concerned.

6. Insofar as the striking out of pleadings is concerned, the requirements as found in the said provision must be satisfied. If the Court below wanted to invoke Order VI Rule 16 of C.P.C., the parties ought to have been put on notice. The petitioners were not even aware that the Court below was going to invoke Order VI Rule 16 of C.P.C., to strike off two of the schedule of properties. The Court below directed striking off two of the properties on the ground that the relief sought for as against these properties is barred by *res judicata*. The plea of *res judicata* has been found to be a mixed question of fact and law. Hence, the Court below ought not to have partially chosen certain properties and invoked the rule of



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res judicata. In short, what the Court could not have done in an application filed for rejection of plaint, has been done in the guise of invoking Order VI Rule 16 of C.P.C.

7.In view of the above discussion, this Court has absolutely no hesitation to interfere with the fair and final order passed by the Court below and accordingly, the order, insofar as invoking Order VI Rule 16 of C.P.C., and directing striking off two of the properties is concerned, is set aside. It is left open to both the parties to agitate all their grievances in the main suit including the plea of *res judicata* and the same will be considered on its own merits and in accordance with law.

8.In the result, this Civil Revision Petition stands allowed. No Costs. Consequently, connected miscellaneous petition is closed.

05.12.2022

Internet : Yes
Index : Yes
Speaking Order / Non Speaking Order
SSR



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To

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The 1st Additional District Court, Coimbatore.



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N. ANAND VENKATESH, J.

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