



C.R.P.(PD) No.3053 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD) No.3053 of 2021
and C.M.P.No.21583 of 2021

1.C.Chennammal
2.C.Muthukrishnan
3.C.Venkatesh
4.C.Yasodha

.... Petitioners

-Vs-

1.M.Prabhuraj
2.V.Padmavathi
3.Senthil Kumar

.... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the order passed in I.A.No.1 of 2019 in O.S.No.210 of 2016 dated 03.03.2021 on the file of II Additional District Judge, Tiruppur.

For Petitioner : Mr.K.R.Arun Shabari

ORDER

The petitioners challenge the order dismissing their application in I.A.No.1 of 2019 seeking rejection of the plaint in O.S.No.210 of 2016. The petitioners who are the defendants in the suit sought for rejection of the plaint mainly on two grounds. The first ground is that the plaintiff had, in the plaint, alleged that some of the suit properties were allotted to his grandfather Chikkanna Chettiar in a partition between



him and his brother, and on his demise it devolved on the petitioners' father. The properties in the hands of the second defendant would be self acquired properties inherited under Section 8 and not ancestral properties which will devolve under Section 6. The second ground on which the petitioners sought for rejection of the plaint is that certain documents that are mentioned in the plaint have not been produced along with the plaint. Therefore, there is a violation of Order VII Rule 14 of C.P.C. The Trial Court had dismissed the application concluding that those issues will have to be decided only at the time of trial and they cannot form basis for an order of rejection of plaint under Order VII Rule 11 of C.P.C.

2. Mr.Arun Shabari, learned counsel for the petitioners would reiterate the submissions made before the trial Court and contend that, in view of the judgment of the Full Bench of this Court in **"The Additional Commissioner of Wealth Tax (Vs) P.L.Karuppan Chettiar"** reported in **AIR 1979 (Mad) Page 1**, the properties that were allotted to Chikkanna Chettiar in the partition between him and his brother would, on his death, be inherited by his son / the second defendant under Section 8 of the Hindu Succession Act and therefore, those properties having partaken the character of self acquired properties, the suit for partition of such properties is not maintainable. The learned counsel would also contend that Order VII Rule 14 of CPC requires the plaintiff to produce documents on which the plaintiff relies. The learned counsel would also rely upon the judgment of the Hon'ble Supreme Court in **2012 (8) S.C.C.706 (The Church of Christ Charitable Trust & Educational Charitable**



Society represented by its Chairman -Vs- M/s.Ponnamman Educational Trust represented by its Chairperson/Managing Trustee) in support of his contention.

3. I am unable to accept the contentions of the learned counsel for the petitioners. No doubt, this Court in Karuppan Chettiar's case *supra* had held that the properties allotted to a father at a partition between the father and the son would devolve on the son after the death of the father under Section 8 and therefore those properties would be characterized as self-acquired properties at the hands of the son. In the very same judgment, the Full Bench of this Court had made it clear that properties which are allotted to the son at such a partition would partake the character of ancestral property vis-a-vis his children. In the case on hand, the partition was not between Chikkanna Chettiar and his father or Chikkanna Chettiar and the second defendant. The partition was between Chikkanna Chettiar and his brother. Therefore, the right by birth that was possessed by the second defendant remained intact. On the death of Chikkanna Chettiar, whatever properties that were allotted to Chikkanna Chettiar would, in such a case, devolve under Section 6 and not under Section 8. If the partition had been between Chikkanna Chettiar and the second defendant, the matter in issue will be squarely covered by the decision of the Full Bench of this Court. But, there is a slight difference of facts. Hence, I do not find the first ground argued by the learned counsel for the petitioner would constitute a reason for rejecting the plaint. As far as the second ground is concerned, I do not



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think non-production of the documents could visit a plaintiff with the consequence of rejection of plaint inasmuch as sub-rule (3) of Rule 14 of Order VII enables the plaintiff to file the documents at a later point of time also. Therefore, non-production of documents relied upon in the plaintiff would not by itself constitute a reason for rejection of the plaint.

4. For the aforesaid reasons the revision fails and it is accordingly dismissed.

No costs. Consequently, connected miscellaneous petition is also dismissed.

24.01.2022

Index : No
Internet : Yes
KST

To

The II Additional District Judge
Tiruppur.



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R. SUBRAMANIAN, J.

KST

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