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CRP.No.4648 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 4648 of 2017

and

CMP.No.21924 of 2017

A.Sundaramurthy

.. Petitioner

Versus

Srirangammal

...Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 15.03.2017 made in I.A.No.65 of 2015 in O.S. No.25 of 2013 on the file of the District Judge, District Court No.II, Kancheepuram.

For Petitioner : Mr.S. Prabhu

For Respondent :Mr. Y. Jothish Chander



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ORDER

This Civil Revision Petition has been filed by the petitioner/3rd defendant seeking to set aside the fair and decreetal order dated 15.03.2017 made in I.A.No.65 of 2015 in O.S. No.25 of 2013 on the file of the District Judge, District Court No.II, Kancheepuram.

2. The petitioner herein is the 3rd defendant and the respondent herein is the plaintiff in the original suit.

3. The case of the petitioner is that the respondent herein/plaintiff filed a suit in O.S.No.25 of 2013 before the District Court No.II, Kanchipuram, seeking for partition of the suit properties and for allotment of one share to her. During the pendency of the suit, the 3rd defendant has filed the application in I.A. No.65 of 2013 under Order 7 Rule 11 C.P.C to reject the plaint. The same was dismissed by order dated 15.03.2017 by the Court below. Being aggrieved by the aforesaid dismissal order, the 3rd defendant has filed the present Civil Revision Petition to set aside the same.



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4. The learned counsel for the petitioner would submit that already there was a partition effected in the year 1999 itself in the name of brothers of plaintiff and the same also acknowledged by the plaintiff/respondent herein by way of writing, the suit is barred under order 2 Rule 2 of CPC. After the partition by way of partition Deed in the year 1999, there is no question of joint Family and joint possession and enjoyment of property does not arise. Further, the plaintiff has not paid proper Court Fee and filed the suit having paid Court Fee under Section 37(2) of TNCF & SV Act. He further relied on the Judgment in the case of "*Dr.L. Ramachandran; Dr. Gayatri Devi Vs. K.Ramesh; K.Suresh; M. Magesh,N.Sekar; N. Sukumar; G.Shivakumar*" reported in 2015(5) CTC 629 (Mad) passed by this Court wherein it has been observed as follows:

11. The learned Single Judge accepted the fact that the age of the plaintiffs as given in the plaint if calculated would show that the youngest plaintiff namely the 6th plaintiff, attained the age of majority in the year 1992 and the time limit for questioning the transaction would expire by 1995 and the plaintiffs have launched the proceedings only in the year 2000 by stating that they verified the records of the Sub-Registrar and that the transactions have taken place without joining them as parties and filed the suit within three years from the date of knowledge. After accepting this factual position, the Court took note of the decisions of the Hon'ble Supreme Court in the cases of Ram Prakash Gupta Vs. Rajiv



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Kumar Gupta, 2008(1) MLJ 45 (SC); Kamala Vs. K.T. Eahwara Sa, 2008 (5) MLJ 617 (SC); and C. Natarajan Vs. Ashim Bai, 2008(1) MLJ 1278 (SC), and observed that the decision to be under Article 59 or any other provisions of limitation Act per se cannot be decisive for the purpose of determining the question as to whether the suit is barred under Article 59 or any other Article stated in the Schedule appended to the Limitation, without any evidence. Further, it was observed that since the decision to be reached on the applicability of the Limitation Act is harbouring on the evidence to be adduced by the parties on a separate issue to be framed therein, it cannot be decided in application under Order 7, Rule 1, C.P.C. for the purpose of rejecting the plaint. Further, it was pointed out that as regards acquiescence pleaded by the Defendants and other arguments for rejecting the plaint, the same would depend upon the evidence to be adduced during the trial, since they are only triable issues to be decided on evidence.

.....

21. It is to be noted that the transaction effected was by the 1st defendant in whose favour the defendants 2 to 4 executed a Settlement Deed. Apart from that there has been two other transactions in respect of the smaller extents in the same property executed by the Defendants 2 to 4 which have not been questioned. The specific case of the defendants 7 & 8 is that they have purchased an extent of 4650 sq.ft of land from the 5th & 6th defendants on 26.04.1982 and their vendors, defendants 5 & 6 had purchased the property on 03.10.1979. Thus, we have no hesitation to hold that the cause of action is absolutely vague and presumably to cover up the delay and to avoid the Suit being thrown out on the ground of limitation. Yet, from the admitted averments in the plaint, the learned single judge found that the suit was barred by limitation. Therefore, it has to be held that there was no cause of action for filing the suit in the year 2000, seeking to set aside the transaction which were done in the year 1979/1982.



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Hence, contended that the suit is not maintainable and liable to be rejected under Order 7 Rule 11 C.P.C. Without considering the facts and circumstances of the case and antecedent decisions of this Hon'ble Court, the Trial Court dismissed the I.A. No.65 of 2015 in O.S. No.25 of 2013 mechanically by order dated 15.03.2017. Hence, it is liable to be set aside.

5. The learned counsel for the respondent would submit that the suit properties admittedly belonged to the plaintiff's Father Anni Pillai and the plaintiff is one of the class I legal heirs to her father under Hindu Succession Act. She is entitled to 1/4th share in all the suit properties. The petition is devoid of merit and the same is filed only with the intention to drag on the suit proceedings. He further relied on the decision of the Supreme Court in the case of *"Shakti Bhog Food Industries Limited Vs. Central Bank of India and another"* wherein it has been observed as follows:

"29..... This Court also noted that while deciding the application under Order 7 Rule 11 CPC, few lines or passage from the plaint should not be read in isolation and the pleadings ought to be read as a whole to ascertain its true import. Even in that case, the trial Court and the High



Court had failed to advert to the relevant averments, as stated in the plaint, which approach was disapproved by this Court. In the present case, as noticed earlier, the Trial Court had failed to advert to and analyse the averments in the plaint, but selectively took notice of the assertion in the plaint in question that the appellant became aware about the discrepancies in July 2000, and then proceeded to reject the plaint being barred by law of limitation having been filed in February 2005.

30. Taking overall view of the matter, therefore, we are of the considered opinion that the decisions of the Trial Court, the first appellate Court, and the High Court in the fact situation of the present case, rejecting the plaint in question under Order 7 Rule 11(d) CPC, cannot be sustained. As a result, the same are quashed and set aside.

In view of the aforesaid observation, the Civil Revision Petition is liable to be set aside.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondent as well as perused the materials available on record.

7. Admittedly, the plaintiff filed the suit in O.S. No.25 of 2013 on the file of the District Court No.11, Kancheepuram seeking for partition of 1/4th share in the suit property being a legal heir of Anni Pillai against her



brothers after 38 years of her marriage, but the defendant contested that there is a Registered partition Deed dated 10.05.1999 which was effected in the name of brothers of plaintiff in the year 1999 itself and accordingly, the suit property were possessed and enjoyed by the plaintiff's brothers as per the said Partition Deed. However, the partition held in the family is to be proved by oral and documentary evidence since it was not admitted by the plaintiff. So also the suit is barred by limitation under Order 2 Rule 2 of C.P.C as such also mixed question of law and facts. Hence, the findings of Trial Judge need no interference. Mere allegation in the affidavit, is not sufficient to conclude about the partition held in the family. Hence, the Revision Petition as such is not maintainable and liable to be dismissed. Accordingly, the Revision Petition is dismissed. However, the Trial Court is hereby directed to dispose of the suit in O.S. No.25 of 2013 within a period of three months from the date of receipt of copy of this order.

8. In the result, this Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed if any. No costs.

11.10.2022

Lbm



Index : Yes/No

Speaking Order : Yes/No

T.V.THAMILSELVI, J.

Lbm

To

1. The District Judge, District Court No.II, Kancheepuram.
2. The Section Officer, V.R.Section
High Court, Madras.

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