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CRP.No.3796 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.3796 of 2018 and
CMP.No.21154 of 2018

1.Ravisankar(died)
2.Meenakshi(transposed from R3)
3.R.Nandhakumar
4.R.Priyadharshini
5.Minor R.Shivasankaran
rep. by his mother and natural guardian
Meenakshi
(sole petitioner died. R3 transposed as second petitioner.
Petitioners 3 to 5 brought on record as LR's of the
deceased sole petitioner Ravisankar vide court order
dated 28.06.2021 made in CMP.Nos.9173 & 9175
of 2021 in CRP.No.3796 of 2018)

... petitioners

Vs.

1.Sakunthala
2.Lakshmi

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order in IA.No.111 of 2018 in OS.No.422 of 2014 dated 13.06.2018 passed by the learned Principal Subordinate Judge, Salem and to allow this civil revision petition.

For Petitioners : M/s.P.Veena Suresh

For Respondents

For R1 : M/s.Zeenath Begum



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For R2 : No appearance

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ORDER

This civil revision petition is filed as against the fair and decretal order passed in IA.No.111 of 2018 in OS.No.422 of 2014 dated 13.06.2018 by the learned Principal Subordinate Judge, Salem, thereby dismissing the petition to file for rejection of plaint.

2. The first petitioner is the second defendant in the suit filed by the first respondent for partition. The case of the plaintiff is that the first defendant is the mother and the second defendant is the brother of the plaintiff. The suit properties are the ancestral properties owned by her father. After demise of her father, the plaintiff and the defendants 1 and 2 are the legal heirs and they are in joint possession and enjoyment of the suit properties. She got married at her age of 17 years. At the time of her marriage, she was minor. At the time of her marriage, the first defendant promised to present 30 sovereigns of jewels along with silver articles as 'sreedhana'. However at the time of the marriage, they were not able to present the same and promised to give her after some time. However, they financially suffered after demise of their father. In the year 1998, the defendants 1 and 2 approached the plaintiff and arranged Rs.40,000/- instead of jewels and silver articles. While accepting the same, they also



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received signature in the documents already prepared by them by saying that it was acknowledgment for the receipt of money instead of jewels. She never executed any release deed in favour of the defendants 1 and 2. Therefore, she is entitled for 1/3 share of the suit schedule properties and filed suit for partition.

2.1 After examining all the witnesses, when the suit was posted for arguments, the petitioner filed petition for rejection of plaint under Order 7 Rule 11 of CPC on the ground that the first respondent suppressed the fact that already she filed suit for partition in OS.No.222 of 1996 on the file of the Additional District Munsif Court, Salem. While pending the said suit, she filed memo dated 27.06.1996 that she had received 20 sovereigns worth gold jewels from her father and also 1000 sq.ft land comprised in survey No.45/7B by the registered sale deed dated 26.10.1987 from the defendants 1 and 2 i.e. the mother and the brother. Therefore, she filed memo and prayed for dismissal of the suit as settled out of the court and also requested refund of half of the court fee paid thereon. After recording the said memo, the trial court dismissed the suit and ordered for refund of half of the court fee by the judgment and decree dated 27.06.1996. It was completely suppressed by the first respondent and filed the present suit for partition. The first defendant i.e. the petitioner in the



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present civil revision petition suffered with stroke and as such he could not able to instruct his counsel properly. Therefore, the said fact was not stated in the written statement. Thereafter he could not able to properly instruct his counsel. Only at the time of arguments, the other family members came to understand about the earlier suit. After dismissing her suit, she also executed release deed thereby relinquished her share in the suit property in favour of her mother and brother i.e. the first and second defendants in the present suit by the registered release deed dated 20.08.1998. After releasing her share in favour of her own mother and brother, now the first respondent filed suit for partition for the very same property which was already released in favour of the defendants 1 and 2 herein. However, the court below dismissed the petition on the ground that it was filed belatedly and also failed to mention about the earlier partition suit in the written statement.

3. In this regard, M/s.P.Veena Suresh, the learned counsel for the petitioner relied upon the judgment in the case of ***Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra) dead through legal Representatives and others*** reported in ***(2020) 7 SCC 366***, wherein the Hon'ble Supreme Court of India held that the power under Order VII Rule 11 CPC may be exercised by the



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Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial,

4. M/s.Zeenath Begum, the learned counsel for the first respondent submitted that after filing the said suit for partition in OS.No.222 of 1996, she was not settled with any cash or any jewels as agreed by them. She was not given any share in the suit schedule property. She further submitted that now the suit is posted for arguments. At this stage, the petition for rejection of plaint cannot be entertained and the trial court rightly dismissed the petition for rejection of plaint.

5. Heard, M/s.P.Veena Suresh, the learned counsel for the petitioners and M/s.Zeenath Begum, the learned counsel for the first respondent.

6. Admittedly, the first respondent filed suit for partition in OS.No.222 of 1996 on the file of the Additional District Munsif Court, Salem in respect of the very same properties mentioned in the present suit. While pending the said suit, the first respondent filed memo on 27.06.1996 and the same memo is extracted as follows:



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“As the plaintiff has got 20 sovereigns worth golden jewels from her father Chinnathambi and also 1000 sq.ft. of land in suit S.No.45/7B on 26.10.1987 from defendants 1 & 2 (her mother and brother) she is satisfied with them for her share. As per Panchayatar's advise the plaintiff states that the suit may be dismissed as settled out of Court and also refund the half of the court fee paid thereon.”

7. On receipt of the said memo, the trial court dismissed the suit as settled out of the court and also ordered for refund of half of the court fee. After period of 18 years, the present suit has been filed for the very same relief by the first respondent in respect of the very same properties. Admittedly the first respondent suppressed the earlier suit filed by her. In pursuant to the settlement between them, the first respondent also executed release deed in favour of her mother and brother i.e. the first and second defendants in the suit by the registered release deed dated 20.08.1998 in respect of her share in th suit properties. In fact, the first respondent was given property admeasuring 1000 sq.ft. comprised in survey No.45/7B in patta No.81 by way of registered sale deed dated 26.10.1987 vide document No.1798 of 1987. Therefore, though the first respondent averred in the plaint in the present suit that the defendants 1 and 2 approached her and arranged for Rs.40,000/- by cash instead of giving jewels and silver articles, on receipt of the same, on 20.08.1998, the first and



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second defendants obtained signature from her in the document which was already prepared by them saying that it is for the acknowledgment for receipt of money instead of articles, no mother and brother would insist for receipt for the 'sreedhana' articles. In fact, for execution of release deed, the executor must present before the Registrar Office and beneficiary's presence are not required in the year 1988. Therefore, the first respondent was present in the Registrar Office and executed released deed in favour of the first and second defendants.

8. That apart, while pending the present suit for partition, the first defendant i.e. the mother of the first respondent also supported the case of the first respondent. She also filed petition to compare the signature found in the deed executed by her in favour of the second defendant. However, after demise of her son i.e. the second defendant, she had withdrawn the said application and accepted the release deed executed by her in favour of the second defendant. Therefore, the present suit is nothing but clear abuse of process of law and it is liable to be rejected. The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action



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should be terminated on any of the grounds contained in this provision. In such case, it would be necessary to put an end to the sham litigation so that further time is not wasted. Therefore, the judgment cited by the learned counsel for the petitioner is squarely applicable to the case on hand and the trial court ought to have rejected the plaint in OS.No.422 of 2014 filed by the first respondent herein.

9. In view of the above, the fair and decretal orders passed in IA.No.111 of 2018 in OS.No.422 of 2014 dated 13.06.2018 by the learned Principal Subordinate Judge, Salem are set aside and this civil revision petition is allowed and the plaint in OS.No.422 of 2014 on the file of the learned Principal Subordinate Judge, Salem is hereby rejected. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Speaking/non-speaking

Index : Yes/No

Internet : Yes

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G.K.ILANTHIRAIYAN, J.

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To

The learned Principal Subordinate Judge,
Salem

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