



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD)No.1671 of 2017

1.M.M.K.Fouzia
2.M.M.K.Aysath Jamila
3.Jalal Ibrahim ...Petitioners/Respondents/Plaintiffs

Vs.

1.M.M.K.Mohideen Ibrahim
2. M.M.K.Mohammed Kasim
3.M.M.K.Mohammed Jamal Ibrahim
4.M.M.K.Sulaika ...Respondents/Petitioners/Defendants

PRAYER: Civil Revision Petition under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal orer, dated 07.02.2013 passed in I.A.No.164 of 2011 in O.S.No.49 of 2011 on the file of the learned Principal District Judge, Ramanathapuram.

For Petitioners :Mr.G.Prabhu Rajadurai
For Respondents :Mr.J.Barathan

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order, dated 07.02.2013 in I.A.No.164 of 2011 in O.S.No.49 of 2011 passed by the learned Principal District Judge, Ramanathapuram.

2.The parties are referred to as per the rank mentioned before the Court below.

3.The respondents/defendants have filed a petition in I.A.No.164 of 2011 in O.S.No.49 of 2011 on the file of the learned Principal District Judge, Ramanathapuram, to call for the plaintiffs under Section 12(2) of Tamil Nadu Court Fees Act, to pay Court fees under Section 37(1) of Tamil Nadu Court Fees Act. The Court below has allowed the said petition and also directed the plaintiffs to pay the remaining Court fees under Section 37(1) of Tamil Nadu Court Fees Act. But, the plaintiffs have failed to pay the remaining Court fees within a period of three months as fixed by the Court below. So, the plaint was rejected. After rejecting the plaint by the Court below, the plaintiffs have preferred this Civil Revision Petition to challenge the order of payment of Court fees.



4.Heard on either side. Perused the material documents available on record.

5.The plaintiffs have to file an appeal against the said rejection order dated 22.07.2013. Before filing this Civil Revision Petition the rejection order was passed by the Court below.

6.The definition of an order under Section 2(14) of Civil Procedure Code, which reads as follows:-

"Order" means the formal expression of any decision of a Civil Court which is not a Decree".

Therefore, from a reading of the above it is clear that an order rejecting a Plaint is a "Decree" and not an "Order".

7.The Court fees has to be paid within the time limit fixed by the Court. If the parties failed to do so the plaint can be rejected. The rejection of plaint only an appeal will lie. But the plaintiffs have challenged only the order of payment of Court fee. Eventhough it is not proper, this Civil Revision Petition is pending from the year 2017 this Court is inclined to pass order.

8.The defendants have filed a petition in I.A.No.164 of 2011 to direct the plaintiffs to pay the remaining Court fees under Section 31(1) of Tamil Nadu Court fees Act. Admittedly the suit properties are belonging to the father of the plaintiffs and defendants.

9(i).The plaintiffs have stated in the plaint that after the death of Late.M.M.K.Mohamed Ebrahim, the defendants were in possession and have been enjoying all the benefits of the above mentioned Late.M.M.K.Mohamed Ebrahim's larger estates and not given a single paise to the plaintiffs. The plaintiffs further submits that the defendnts had sold approximately 10 acres to other third parties under sale deed dated 27.04.2007 registered as document No.1166/07 various persons of the above said property to the 2nd defendants without the knowledge of the plaintiffs. The plaintiffs submits that after the death of Late.M.M.K.Mohamed Ebrahim, the defendants are also enjoying the income to an extent of Rs.1,00,000/-per mensum by way of lease for 10 to 29 years in respect of properties mentioned above.

9(ii).It is further stated that the plaintiffs that, even since the date of death of the deceased M.M.K.Mohamed Ebrahim on 11.06.2008, the plaintiffs has been demanding partition and possession of the properties and the defendant's assured about the plaintiffs' share. Later the defendants have not given any importance to their assurance and refused to give the plaintiffs' share and the defendants have been postponing the same with ulterior motives and enjoying the properties exclusively and excluding the plaintiffs from the enjoyment of the said properties of its fruits



thereof and was threatening the plaintiff with rowdy elements.

9(iii).It is further stated that one year before death of M.M.K.Mohamed Ebrahim, he was in unconscious condition. At that time, defendants have obtained forgery signature from Late.M.M.K.Mohamed Ebrahim and got transferred some valuable properties in their name.

10.From the above, the plaintiffs have admitted that their possession is excluded by the defendants and enjoyed the properties exclusively. In all the aforesaid paragraphs, the plaintiffs very fairly admitted that they are an exclusion of possession and they have also admitted that the defendants have fraudulently created some documents and obtained forged signatures from their father and transfer some valuable properties in the name of the defendants. These pleading are clearly shows that the plaintiffs are peaceful possession in the suit properties.

11.In view of the foregoing reasons, the Court below has rightly dismissed the I.A.No.164 of 2011 in O.S.No.49 of 2011 and hence, this Court has no reason to interfere with the order passed by the Court below.

12.Finally, the Civil Revision Petition is dismissed by confirming the order, dated 07.02.2013 in I.A.No.164 of 2011 in O.S.No.49 of 2011 passed by the learned Principal District Judge, Ramanathapuram. No Costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ksa

To

The Principal District Court,
Ramanathapuram.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-9148[F] dated 01/03/2022)

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-9263[F] dated 01/03/2022)

C.R.P. (MD)No.1671 of 2017

28.02.2022

RD(07.04.2022) 3P 4C