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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 26.04.2022

DELIVERED ON: 07.06.2022

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P. (MD) .No.1712 of 2017

and CMP(MD) .No.9342 of 2017

1.M.S.B.Seenivasan

2.M.S.B.Ramesh Babu

3.M.S.B.Solairaj

4.M.S.B.Anbarasan

5.R.V.S.Mariappan

...Petitioners/Petitioners
/Defendants 6 to 10

Vs

Krishnaveni

...Respondent/Respondent
/Plaintiff

PRAYER: Civil Revision Case is filed under Article 227 of Constitution of India, to set aside I.A.No.598(A) of 2016 in O.S.No.31 of 2015 dated 24.07.2017 on the file of the District Munsif Court, Kovilpatti, Tuticorin District.

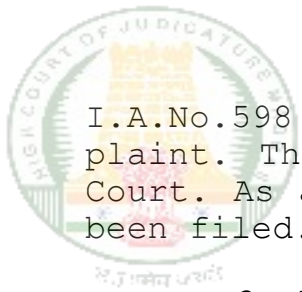
For Petitioners : Mr.L.Prabahar

For Respondent : Mr.S.Sivalayaraja

O R D E R

Defendants 6 to 10 in O.S.No.31 of 2015 on the file of the District Munsif Court, Kovilpatti, Tuticorin District are the revision petitions herein.

2.The respondent herein had filed O.S.No.31 of 2015 for the relief of partition claiming 1/6th share in the suit schedule property of 2.50 acres. Pending suit, defendants 6 to 10 had filed



I.A.No.598(A) of 2016 under Order 7 Rule 11 C.P.C to reject the plaint. The said application was dismissed by the District Munsif Court. As against the same, the present Civil Revision Petition has been filed.

3.The learned counsel for the revision petitioners had contended that there is no cause of action for filing the present suit. Originally the owners of the suit property namely Lakshmiammal and Mariappa Nadar have executed a registered sale deed in favour of one Selvakani Nadar for an extent of 80 cents who in turn has sold the same in favour of the defendants 6 to 9. The learned counsel for the revision petitioners had further contended that another extent of 1.70 cents was sold by the said Mariappa Nadar and his mother Lakshmiammal in favour of the sixth defendant under Document No.2051 /1972.

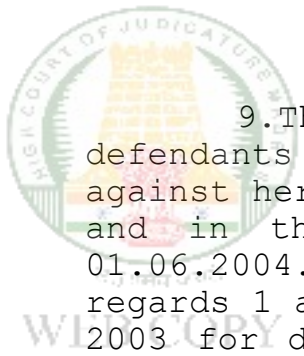
4.The learned counsel for the revision petitioners had further contended that O.S.No.223 of 2003 and O.S.No.224 of 2003 were filed as against the vendor before the District Munsif Court, Kovilpatti by the defendants 6 to 8 herein for the relief of declaration of title and permanent injunction and the suits have been decreed exparte way back on 21.07.2008 and 14.06.2004 respectively. Hence, viewed from any angle, the plaintiff's family had lost title to the suit schedule property. Hence, according to the learned counsel for the petitioners, the suit for partition is nothing but an abuse of process of Court.

5.Per contra, the learned counsel for the respondent had contended that the validity said sale deed said to have been executed by grandmother and father of the plaintiff have to be ascertained only in the trial and not by way of an application for rejection of plaint. He further contended that the trial Court after careful consideration of the pleadings on either side, had dismissed the application relegating the said issue for trial. Hence, he prayed for dismissal of the revision petition.

6.I have considered the submissions made on either side.

7.It is admitted in the plaint that the entire suit schedule property of 2.50 acres originally belonged to one Subbaiah Nadar. After his death, it devolved upon his wife Lakshmiammal and his son Mairappa Nadar. The said Lakshmiammal and Mariappa Nadar have jointly sold 80 cents in favour of one Selvakani Nadar who in turn has sold the same in favour of the defendants 6 to 9 in the year 1983.

8.The said Mariappa Nadar and Lakshmiammal have sold the balance 1 acre and 70 cents in favour of the sixth defendant in the year 1972. All the above facts are admitted in the plaint.



9.The plaintiff has further admitted that the contesting defendants have filed O.S.No.224 of 2003 with regard to 80 cents as against her father for declaration of title and permanent injunction and in the said suit, an exparte decree has been passed on 01.06.2004. The plaintiff has further admitted in the plaint that as regards 1 acre and 70 cents, the defendants have filed O.S.No.223 of 2003 for declaration of title and permanent injunction as against her father and obtained an exparte decree on 21.07.2008. These admissions stated supra, will clearly indicate the fact that the suit schedule properties are the absolute properties of Mariappa Nadar and Lakshmiammal. They have sold the same to the defendants in the year 1972 and 1983. During their life time, they have not chosen to challenge the sale deed on any ground.

10.The plaintiff's father who was arrayed as party in both the suits covering the entire extent of 2.50 acres had remained exparte and the title in favour of the defendants has been declared on 01.06.2004 and 21.07.2008.

11.For considering an application for rejection of plaint, the plaint averments and the documents filed along with plaint alone can be considered. Hence, a mere reading of the plaint averments will clearly indicate that the absolute owners of the entire extent of suit schedule property have sold it to the third parties during their life time. They have also suffered an exparte decree for declaration of title and permanent injunction. When the plaintiff, who is the daughter of the said Mariappa Nadar, had filed a suit for partition, the suit schedule property was not owned by the family at all. To summarize, the family has lost title to the defendants 6 to 9.

12.Since the suit schedule property is the absolute property of the plaintiff's father and her grandmother, the question of joining the plaintiff in the sale deed and the issue of minor's right in the property does not arise at all. That apart, during their life time, they have sold away the property which has been confirmed by way of a decree in O.S.No.223 of 2003 and O.S.No.224 of 2003. Hence, a mere reading of the plaint averments will indicate that the plaintiff has no cause of action whatsoever and the present suit for partition is not only a vexatious proceedings, but also an abuse of process of the Court.

13.The trial Court without considering the plaint averments, has proceeded to hold that the said issue would be considered only at the time of trial. When a bare reading of the plaint itself indicates that the suit for partition is not maintainable, the defendants need not undergo the agony of trial. The plaintiff has no cause of action for filing the present suit. Hence, the order of the trial Court in I.A.No.598(A) of 2016 in O.S.No.31 of 2015 is set aside. The plaint in O.S.No.31 of 2015 on the file of the District



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Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

msa

To

The District Munsif ,
Kovilpatti, Tuticorin District.

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RD(17.06.2022) 4P 4C