



C.R.P.No.195 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.R.P. No.195 of 2023

and

C.M.P.No.1571 of 2023

Murugan

..

Petitioner

Vs

1.Sivakumari

2.Selvakumari

..

Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India seeking to allow this Revision Petition and set aside the fair and decretal order dated 16.11.2022 passed in I.A.No.88 of 20158 on O.S.No.127 of 2017 on the file of the Principal District Court at Cuddalore.

For Petitioner : Mr.R.Rajavelavan



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ORDER

The Civil Revision Petition on hand has been instituted challenging the fair and decretal order dated 16.11.2022 passed in I.A.No. 88 of 2018 in O.S.No.127 of 2017. The defendant in the suit is the revision petitioner herein and the respondent instituted a suit for partition.

2. During the pendency of the civil suit, the revision petitioner/defendant filed an interlocutory application in I.A.No.88/2018 for rejection of plaint for Order VII, Rule 11 of CPC. The trial court adjudicated the issues and found that the plaint cannot be rejected merely on the ground of limitation raised by the defendants in the interlocutory application. For the purpose of forming a final opinion in the matter of limitation, adjudication is required and accordingly, the interlocutory application was dismissed.

3. Learned counsel for the revision petitioner contended that the plaint averments would be sufficient to form an opinion that the suit was not instituted within the limitation prescribed and more so the plaintiffs were aware of the settlement earlier executed by the deceased father and those factors cannot be disputed and based on such averments in the plaint, the trial court



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ought to have allowed the interlocutory application filed under Order VII Rule 11 for the purpose of rejecting the plaint.

4. The Court is expected to exercise its powers while allowing applications under Order VII, Rule 11 of CPC. All suits are to be tried on merits and in accordance with law. The scope of the Order VII Rule 11 of CPC, cannot be expanded for the purpose of adjudication of disputes or recording of certain facts on merits. Such recordings are to be done only on full-fledged trial and by affording opportunities to the parties to the suit. The very purpose of Order VII, Rule 11 of CPC is to ensure that frivolous suits are nipped in the bud and not to deprive the parties to adjudicate the disputed issues on merits. Thus the plaint averments regarding the settlement deed and other documents and the point of limitation raised by drawing factual inference from the plaint by the defendants are required to be adjudicated by way of trial and the parties would get ample opportunity to establish their case during the course of trial. Such an opportunity contemplated under CPC cannot be taken away merely by rejecting the plaint by the Order VII, Rule 11 of CPC. Since the very object of the Order VII, Rule 11, is entirely different and cannot be utilized for the purpose of depriving the plaintiffs from establishing their case.



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S.M.SUBRAMANIAM, J.

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5. In the present case, the trial court considering the grounds raised by the revision petitioner/defendant, made a finding that the disputed issues regarding documents referred by the plaintiff in the plaint and the point of limitation raised can be decided only after trial and by affording an opportunity to the parties. The finding in this regard cannot be construed as infirm and thus this Court is not inclined to entertain the present civil revision petition. Consequently, the fair and decretal order dated 16.11.2022 passed in IA No.88 of 2018 in OS No.127 of 2017 stands confirmed.

6. Consequently, the present Civil Revision Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petition stands closed.

02.02.2023

Speaking Order/Non-Speaking Order.

Internet : Yes/No.

Index: Yes/No.

Neutral Citation: Yes/No

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