



CRP.No.967 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2023

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CRP.No.967 of 2023 and
CMP.No.7195 of 2023

1.Saranya
2.Revathi

... Petitioners

Vs.

M.Abirami

... Respondent

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India to set aside the fair order and decretal order dated 30.01.2023 made in IA.No.5 of 2022 in OS.No.92 of 2022 on the file of XV Additional City Civil Court, Chennai by allowing the above civil revision petition.

For Petitioners : Mr.R.Rajaramani

ORDER

Challenging the impugned order dated 30.01.2023 passed in IA.No.5 of 2022 in OS.No.92 of 2022 by the XV Additional City Civil Court, Chennai, the defendants preferred this revision.



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2. Suit in OS.No.92 of 2022 filed by the respondent herein / plaintiff

for the relief of declaration and other consequential relief in respect of number of properties as described in the schedule. She filed relief of preliminary decree for partition and declaring settlement deed as null and void and other consequential relief against the defendants. After receipt of notice, the defendants filed application to reject the plaint under Order 7 Rule 11 of CPC stating that there is no cause of action to file the suit. Moreover, the plaintiff not averred when she came to know about the alleged execution of settlement deed since the said document was executed much earlier in the year 2012. But without assigning any reason, she approached the court and also there is no cause of action and the same is barred by law. Hence, she prayed to reject the plaint. The said application was strongly objected by the plaintiff and on hearing both sides, the trial Judge dismissed the same holding that the plaintiff is claiming partition as if she is the legal heir of the deceased Chokkalingam and the defendants are claiming that she is not the natural daughter of the said Chokkalingam and also to reject the suit, there is no cause of action. As such, all are mixed question of law and facts and the same can be decided only after completion of evidence. Hence, the application was dismissed. Challenging the same, they preferred this revision.

3. The learned counsel for the revision petitioners submits before this



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Court that the plaintiff is not a legal heir of the deceased Chokkalingam and the same can be inferred from the notice given by them and furthermore, with regard to cancellation of settlement deed which is of the year 2012, the plaintiff approached the court only in the year 2022, near about 10 years from the date of the settlement deed, but without disclosing how she came to know about the document. As such, the same is not maintainable for want of cause of action.

4. But as discussed above, with regard to natural heir of the deceased Chokkalingam and with regard to execution of the settlement deed, are all to be proved only by adducing evidence and not merely based on the plaint averments. The trial Judge rightly dismissed the same since they are mixed question of law and facts and needs detailed evidence. Therefore, the plaint cannot be rejected on bare reading of the affidavit. Accordingly, the reason assigned by the trial Judge is justifiable and needs no interference.

5. However, the trial Judge is directed to dispose of the suit as early as possible. Liberty is given to the defendants to raise all the above defence before the trial court.

6. Accordingly, this civil revision petition is disposed of. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.



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31.03.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order
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T.V.THAMILSELVI, J.

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To

The XV Additional City Civil Court,



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