



C.R.P. No. 3413 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.09.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. No. 3413 of 2023

and

C.M.P.No.21177 of 2023

R.Kumari (died)

- 1.R. Selvi
2. R.Usha
3. R. Venkatesam
4. R. Kalidasan

...Petitioners

.Vs.

1. S. Kalaivani
2. Rajkumar

...Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal Order dated 21.06.2023 passed by the Hon'ble Additional District Court at Tirvannamalai in I.A.No.1 of 2023 in O.S.No.18 of 2014 and pass orders.

For Petitioner : Mr.P. Balamurugan



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ORDER

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This petition is filed to set aside the fair and decreetal Order dated 21.06.2023 passed by the Additional District Court at Tirvannamalai in I.A.No.1 of 2023 in O.S.No.18 of 2014.

2. The facts of the case is that the petitioners herein have filed a petition in I.A.No.1 of 2023 to reject the above suit in O.S.No.18 of 2014 under Order 7 Rule 11 of C.P.C and the same was dismissed vide order dated 21.06.2023. Aggrieved over the same, the petitioners have filed this present petition.

3. The learned counsel for the petitioners submitted that the respondents herein have already filed a suit in O.S.No.477 of 1997 and the same was dismissed for default on 16.08.1999. Thereafter, the respondents filed another suit in O.S.No.28 of 2006 with the same prayer as sought for in O.S.No.477 of 1997. The petitioners have filed I.A.N.3070 of 2011 in O.S.No.28 of 2006 to reject the plaint in O.S.No.28 of 2006. The grievance of the petitioners is that the present suit in which the matter directly and



substantially in issue in the former suit O.S.No.28 of 2006 are one and the same and the learned Judge has allowed I.A.N.3070 of 2011 in O.S.No.28 of 2006, wherein the prayer sought for is to reject the plaint in O.S.No.28 of 2006. Hence he prays to allow this petition.

4. On a perusal of a impugned order, the learned Judge has made an analysis that if an application filed under Order VII Rule 11 of C.P.C can be considered in a stage of the suit when the trial has proceeded and concluded the same that the said application cannot be taken and decided before the trial is commenced. Further more the learned Judge in the impugned order has made an observation that on reading of the present plaint in O.S.No.18 of 2014 reveals that the suit is for the relief of partition and also for the declaration of the status of the plaintiffs and for consequential injunction and costs. Thus, the present suit is an all comprehensive suit with a predominant relief of partition. Hence, the nature of the present suit cannot be compared to the nature and character of the earlier suits. Therefore, the relief prayed in the present suit is predominantly relief of partition, which has to undergo a trial on merits. Thus, the learned



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Judge after hearing the arguments of both sides and taking into account of the legal provisions has dismissed the application filed by the petitioners and the same is perfectly valid in the eye of law and the same does not require interference by this Court.

5. In view of the above, the order passed in 21.06.2023 passed by the Additional District Court at Tirvannamalai in I.A.No.1 of 2023 in O.S.No.18 of 2014 is confirmed. Accordingly this Civil Revision Petition is dismissed. No order as to costs. Consequently the connected miscellaneous petition is closed.

19.09.2023

smn

Index : Yes/No

Internet: Yes/No

To.

1. The Additional District Court at Tirvannamalai



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V.BHAVANI SUBBAROYAN,J.
Smn

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