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CRP No.3123 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.3123 of 2023
and
CMP.No.19354 of 2023

1.K.Subramaniam
2.A.S.Pradeep

... Petitioners

Versus

1.Gandhimathy
2.Samrithy
3.Minor Harsha
4.Minor Harshitha
5.P.Sivakumar

...Respondents

Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the fair and decretal order dated 08.09.2021 made in I.A.No.2 of 2019 in O.S.No.32 of 2019 on the file of the II Additional District Court and Sessions Court, Tiruppur.

For Petitioners : Mr.N.Manoharan

For Respondents : M/s.P.Uma



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ORDER

The petitioners have filed this revision petition to set aside the fair and decretal order dated 08.09.2021 made in I.A.No.2 of 2019 in O.S.No.32 of 2019 on the file of the II Additional District Court and Sessions Court, Tiruppur.

2. Heard, Mr.N.Manoharan, the learned counsel for the petitioners, Mrs.P.Uma, the learned counsel appearing for the respondents. Perused the materials placed on record.

3. Before the trial Court the revision petitioners / defendants 2 & 3 have filed an I.A.No.2 of 2019, under Order VII Rule 11 of CPC for rejection of plaint against the plaintiffs and the 1st defendant.

4. The learned counsel for the petitioners submitted that the plaintiffs have no right over the suit property, as the property was purchased by the defendants 2 & 3 on 14.11.2013 under two documents and the vendor who derived the title documents of the year 1975. Therefore the present plaintiffs who are the sons and daughters of the vendor have no right to file the present suit and prays to reject the plaint as there is no cause of action.



5. By way of reply, the learned counsel for the respondents submitted that the respondents have claimed the share in the suit properties as a joint family properties. Hence the father of the plaintiffs have no right to sell the property including their own shares, and therefore, they have valid defence to prove their claim.

6. On considering both side submissions, the learned trial Judge held that the litigations involved more issues, apart from the interest of the plaintiffs, the matter needs oral evidence, and therefore it cannot be rejected. To that effect the Learned counsel relied upon the decision of the Hon'ble Supreme Court, "**Madhav Prasad Aggarwal & Another Vs. Axis Bank Ltd & Another SLP (C) No.31579 of 2018 dated 01.07.2018**" which reads as follow:

"the plaint has to be ejected as a whole or not at all, in exercise of power under Order VII Rule 11(d) of CPC. Thus it is not permissible to reject the plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others."

Based on the above decision, the learned trial Judge had dismissed the I.A.No.2 of 2019. Aggrieved by the same, the revision petitioners have filed this Civil Revision petition.



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WEB COPY 7. On seeing the facts that the revision petitioners have filed a suit in the year 2013 for valid consideration from Aminiammal, who derived title over the entire property purchased from D1 who got the property from his grandmother Amminammal. The said Ammuniammal derived the title over the entire property by way of release deed executed by other co-sharers sons and daughters. Further, the learned counsel submitted that the family partition deed was executed on 10.07.1975 thereafter properties were divided, and became separate properties and absolutely owned by KandaSamyGounder. So, it is not the ancestral property of the family as claimed by the plaintiffs. Therefore, the petition to reject the plaint of the plaintiffs that they have no right over the property is baseless. However, the learned counsel for the petitioners submitted that eventhough the document stand in the name of the present revision petitioners, the minor sharers are having right in the joint family property but include their shares in the properties, it was conveyed having so replied and submitted that the same needs no interference by this Court.

8. Hence, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.



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9. However, liberty is granted to the revision petitioners to put forth all the defence before the trial Court and the learned trial Judge is directed to dispose of the case within a period of 6 months from the date of receipt of a copy of this order.

06.12.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation:Yes/No

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To

- 1.The II Additional District Court and Sessions Court,
Tiruppur.
- 2.The Section Officer,
VR-Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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