



C.R.P.(PD)No.3667 of 2019

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.3667 of 2019
and CMP.No.24082 of 2019

M/s.L.K.Trust,
Rep. by its Trustee,
K.L.Swamy
S/o.Lakshmansa,
No.9, Seshadri Road,
Bangalore-560 009.

... Petitioner

Vs.

1.Princess Fathima Fouzia,
Rep. by her Power of Attorney,
Himayat Ali Mirza,
Son of Nawab Manzil,
8-2-684/4/40, Road No.12,
Bangara Hills,
Hyderabad.

2.Prince Mukarram Jah Bahadur
3.Prince Mufakkam Jah Bahadur
4.Prince Shahmath Ali Khan
5.Princess Amina Marzia
6.Princess Oolia Kulsum

... Respondents

1/5



C.R.P.(PD)No.3667 of 2019

WEB COPY

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the Fair and Decretal Order dated 04.07.2019 passed in I.A.No197 of 2018 in O.S.No.43 of 2017 on the file of District Court of Nilgiris at Udhagamandalam has to be set aside.

For Petitioner : Mr.M.Purushothaman

For Respondents : No Appearance

ORDER

The suit is for partition. A detailed written statement has been filed by the civil revision petitioner. According to the civil revision petitioner, there is a dispute on the title on the basis of which the plaintiff claims possession of the property. Apart from that, he would state that the suit is hit by the vice of re-litigation by virtue of the orders passed by the Court in Hyderabad and also by virtue of the orders passed in a writ petition. In other words, it is a mixed plea for *res judicata* as well as abuse of process of law.

2.While treating an application for rejection of plaint, the Court will have to take the averments made in the plaint to be true and on that basis



C.R.P.(PD)No.3667 of 2019

come to the conclusion as to whether the suit is liable to be rejected or not.

3.A careful reading of the plaint discloses that the plaintiff has claimed the property, by virtue of being a descendent of 7th Nizam of Hyderabad. The plea of the civil revision petitioner is that the property did not belong to the 7th Nizam of Hyderabad, but is an exclusive property of the 8th Nizam and therefore, the plaintiff cannot claim any right over the same. As I have already premised, while dealing with the rejection of plaint, I cannot look beyond the plaint and the documents. I am also not concerned whether the suit is going to be decreed or is going to be dismissed. It is a plea in demurrer. Reading the plaint fully, according to me, discloses a cause of action. The plea of *res judicata* and re-litigation are mixed question of law and fact and have to be gone into at the time of trial. The exception being, reading of the plaint itself leads one to such a conclusion.

4.The learned trial Judge has given the proper reasons for the purpose of dismissing the petition for rejection of plaint. I do not find the



C.R.P.(PD)No.3667 of 2019

WEB COPY

order being affected by any illegality or irregularity for me to interfere under Article 227 of the Constitution of India.

5.Taking into consideration that the suit has been pending from 2017, I deem it fit, while dismissing this revision, to give a direction to the learned trial Judge to dispose of the suit within a period of nine (9) months from today, in any event, on or before 30.06.2024. On the disposal of the suit, the learned Principal District Judge, Udhagamandalam shall submit a report to this Court informing the disposal of the same.

6.With the above direction, the civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14.09.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

vs

To

The District Court,
Nilgiris at Udhagamandalam.

4/5



WEB COPY



C.R.P.(PD)No.3667 of 2019

V.LAKSHMINARAYANAN,J.

VS

**C.R.P.(PD)No.3667 of 2019
and CMP.No.24082 of 2019**

14.09.2023