



C.R.P.No.4434 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.4434 of 2023

and

C.M.P.No.26796 of 2023

V.Sundaramoorthy

... Petitioner

-Vs-

1.K.V.Mohankumar

2.Vasanthi

3.N.Nareshkumar

4.N.Nandakumar

5.N.Vanathi

6.N.Vidya

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and final order dated 13.10.2023 passed by the learned Additional District Judge (Fast Track Court), Mettur in I.A. No.331 of 2010 in O.S.No.265 of 2008.

For Petitioner

: Mr.L.Mouli



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ORDER

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Challenging the impugned order passed in I.A.No.331 of 2016 in O.S.No.265 of 2008 passed by the learned Addl. District Judge (Fast Track Court), Mettur, the Revision Petitioner/1st defendant preferred this Civil Revision Petition.

2. Since the relief is claimed challenging the order passed by the trial judge, notice to the respondents is dispensed with.

3. Before the trial court, the 1st respondent/plaintiff filed a suit in O.S.No. 265 of 2008 against the defendants 1 to 6 for the relief of partition claiming half share in the suit property. The Revision Petitioner is the 1st defendant in the suit. He filed his written statement and now the case is ripe for trial. At this stage, the Revision Petitioner filed an application to reject the plaint stating that at the earlier occasion, the deceased A.V.Nagaraj, his brother filed a suit in O.S.No. 173 of 1996 and subsequently the suit was transferred to Sub-Court, Mettur, thereby renumbered as O.S.No. 666 of 1999. Thereafter, the suit was dismissed for default in the year of 2000. Furthermore, already the properties were partitioned by orally in the year of 1996. Therefore, the present suit as such is not maintainable. Suppressing the oral partition, the 1st



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respondent/plaintiff filed the present suit as such there is no cause of action. Hence, he prayed to reject the plaint. The 1st respondent/plaintiff raised objections stating that no such oral partition was happened. The earlier suit was also dismissed for default. Notice was issued in the year of 2008 and so, there is a cause of action to file a suit. Accordingly, he prayed to dismiss the application. Considering both side submissions, the trial judge dismissed the application holding that the share and right of parties can be decided only after considering the evidence and it cannot be rejected without conducting the trial. Challenging the said findings, the revision petitioner/1st defendant preferred this Civil Revision Petition.

4. The learned counsel for Revision Petitioner would submit that the trial judge failed to take note of the fact that already oral partition was happened and the earlier suit filed by the brother was also dismissed for default, since because already partition was happened. But, the trial judge failed to consider the same. Hence, he prayed to set aside the findings of trial judge.

5. Records perused. On considering the entire facts, it reveals that now the suit is ripe for trial and all these days, the defendants also contested the case stating that there was a oral partition, but without



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evidence, it cannot be held that there was a oral partition. Moreover, the 1st respondent/plaintiff also denied the oral partition. Therefore, the defence taken by the Revision Petitioner needs sufficient evidence. So, the present suit filed by the 1st respondent/plaintiff as such is maintainable and the findings rendered by the trial judge needs no interference. Accordingly, this Civil Revision Petition is dismissed and the findings rendered by the trial judge in I.A.No.331 of 2016 in O.S.No.265 of 2008 is confirmed. Liberty is granted to the Revision Petitioner to raise all his defence before the trial court. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

13.12.2023

Index : Yes/No
Speaking Order : Yes/No
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To

The Additional District Judge (Fast Track Court), Mettur



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T.V.THAMILSELVI, J.

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