



C.R.P(PD)(MD).No. 2412 of 2018

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.08.2023

CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P(PD)(MD).No. 2412 of 2018
and CMP(MD)No.10770 of 2018

Lakshmanapermal

... Petitioner

Vs

1.Mariammal

2.Mariammal

3.Mariappan

4.Krishnammal

5.Seeniammal

....Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the Fair and Decreetal order, dated 14.08.2018 in I.A. No. 55 of 2018 in O.S. No. 69 of 2017 on the file of the District Munsif Court, Kovilpatti by allowing this Civil Revision Petition.

For Petitioner : Mr.S.Muthumalai Raja

For Respondents : Mr.S.Ponsenthilkumaresan



C.R.P(PD)(MD).No. 2412 of 2018

ORDER

WEB COPY

To set aside the fair and decreetal order, dated 14.08.2018 passed in I.A.No. 55 of 2018 in O.S. No. 69 of 2017 passed by the learned District Munsif, Kovilpatti, the revision petitioner has filed this Civil Revision Petition.

2.The petitioner is the petitioner/defendant and the respondents are the respondents/plaintiffs before the Court below. For the sake of convenience, the parties are referred to as per the litigative status in the suit.

3.The brief facts, which give rise for filing the instant civil revision petition are as follows:

(i)The respondents/plaintiffs have filed a suit for the relief of declaration, recovery of possession and for permanent injunction. When the suit was pending, the petitioner/defendant has moved a petition under Order 7 Rule 11 of Civil Procedure Code, under the following ground that the suit is barred by limitation, suit is under valued and for improper valuation and on the question of pecuniary jurisdiction;



C.R.P(PD)(MD).No. 2412 of 2018

WEB COPY

(ii)The learned counsel for the petitioner/defendant would submit that she has purchased the suit property from one Gurunatha Nadar in the year 2001 and after that, for about 15 years, he has been in physical possession and enjoyment of the property. Therefore, as per Articles 64 and 65 of Limitation Act, the very suit is barred by limitation. In respect of other aspects, the learned counsel for the petitioner would submit that he has also put up concrete structure in the suit property, which costs around Rs.10 lakhs. However, the suit has been under valued. Therefore, on the ground of under valuation and on the ground of pecuniary jurisdiction, the plaint has to be rejected;

(iii)However, the learned counsel for the respondents/plaintiffs would submit that while considering an application under Order 7 Rule 11 of Civil Procedure Code, only the plaint averments and documents have to be considered.

4.I have given my anxious consideration to either side submission.



C.R.P(PD)(MD).No. 2412 of 2018

WEB COPY

5.The learned counsel for the respondents/plaintiffs has rightly stated that according to frame work under Order 7 Rule 11 of Civil Procedure Code, the Court has to go by the plaint averments and cannot rely upon any other materials, other than plaint and plaint documents.

6.On harmonious reading of the plaint, this Court could not find any pleadings so as to make the suit, to become barred by limitation. In respect of valuation of suit, from the plaint averments, this Court could not find any value for the alleged concrete structure in the suit property.

7.As discussed hereinabove, it is seen that when an application is being adjudicated under Order 7 Rule 11 of Civil Procedure Code, the Court shall presume the plaint averments to be true. In such course if any of the ground enumerated under Order 7 Rule 11 of Civil Procedure Code emerges from the pleadings of plaint and plaint documents, then only the plaint can be rejected. In this case, this Court could not find out any ground under Order 7 Rule 11 of Civil Procedure Code from the pleadings of plaint and plaint documents. Therefore, I do not find any infirmity in the order of the Court below.



WEB COPY



C.R.P(PD)(MD).No. 2412 of 2018

C.KUMARAPPAN, J.,

PNM

ORDER IN
C.R.P(PD)(MD).No. 2412 of 2018
and CMP(MD)No.10770 of 2018

03.08.2023