



CRP No.163 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

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and

CMP.No.819 of 2024

M.Shanmugam (died),

1. S.Bakiyalakshmi

2. S.Maruthachalam

3. S.Vijayakumar

4. R. Kowsalya

5. T.Shanthi

6. V.Kalaivani

... Petitioners

/vs/

T.Bakiyalakshmi

... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 03.10.2023 passed in I.A.No.4/2019 in O.S.No.99/2016 by the III Additional District Court, Coimbatore.

For Petitioners

... Mr.A.E.Ravichandran



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ORDER

This civil revision petition has been filed to to set aside the fair and decreetal order dated 03.10.2023 passed in I.A.No.4/2019 in O.S.No.99/2016 by the III Additional District Court, Coimbatore.

2. The petitioners herein, (legal heirs of the deceased first defendant) are the defendants 9 to 14 and the respondent herein is the plaintiff in the above said suit in O.S.No.99/2016 and it was filed for partition of the suit property against the defendants 1 to 14. In the above said suit, the first defendant filed written statement and pending suit, the first defendant and the petitioners herein have filed I.A.No.4/2019 to reject the plaint and the same was dismissed. Challenging the above order, this civil revision petition has been filed.

3. The learned counsel for the petitioners submitted that, earlier, the respondent/plaintiff had filed a suit in O.S.No.417/2006 seeking permanent injunction, claiming title over the property in S.F.No.51/1, on the basis of a Will dated 21.04.1995. The above said suit was dismissed by the learned II Additional District Munsif, vide judgment dated 28.11.2013, holding that



the respondent/plaintiff has not proved her title and possession over the suit property. Since she did not succeeded in the above said suit, now, filed the present suit for partition, including the property in S.F.No.51/1.

4. He further submitted that a Will dated 10.02.1992 was executed by Muthusamy Konar, the father of the first defendant bequeathing the property in S.F.No.51/1 of Vellalore Village in favour of the first defendant and the above Will dated 10.02.1992 came into effect, only on the death of Muthusamy Konar on 01.06.1996 and he was in possession of the suit property and after his demise the petitioners herein are in joint possession of the suit property. In the earlier suit, the respondent/plaintiff claimed that, the Will dated 10.02.1992 was cancelled by Muthusamy Konar at later point of time. But, there was no cancellation of Will dated 10.02.1992 and further, the Will dated 21.04.1995 is a fabricated document. In the meanwhile, the second defendant in the suit, had filed POP No.13/2018 before the Principal Subordinate Judge, Coimbatore to probate the alleged Will dated 21.04.1995, however, in the above probate proceedings, the respondent/ plaintiff remain exparte. In such circumstances, the plaint in



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O.S.No.99/2016 filed by the respondent/plaintiff has to be rejected on the grounds of i) resjudicata, ii) Law of Estoppel, iii) Under valuation, iv) law of limitation and v) abuse of process of court. Hence he seeks to set aside the impugned order and to reject the plaint in O.S.No.99/2016.

5. Heard the learned counsel for the petitioners and I have perused the materials on record.

6. Admittedly, the petitioners herein are the defendants 9 to 14 and the respondent herein is the plaintiff in the above said suit in O.S.No.99/2016. The respondent herein has filed the said suit seeking partition of the suit property into six equal shares and to allot one such share to her. It is the contention of the petitioners that, when the suit in O.S.No.417/2016, the respondent/plaintiff has not claimed inheritance or, obtained leave of the court to agitate the same later. Hence, the present suit in O.S.No.99/2016 is barred under Order 2 Rule 2 CPC. Further, the petitioners contended that in the earlier suit, when the defendant pleaded the existence of the Will dated 10.02.1992, the respondent/plaintiff ought to



have filed the present suit challenging the Will dated 10.02.1992. But, without seeking The learned Judge, without considering the above aspects in proper perspective has the impugned order.

7. It is the admitted facts that the respondent/ plaintiff being the legal heir of Muthusamy konar, has claimed partition in the suit against the defendants. Further, the father of the petitioners, viz., Shanmugam (deceased)/ first defendant is also one of the shareholders in the suit property. On perusal of the entire averments made in the plaint, it reveals that there is a cause of action for filing the suit. Further, all the issues raised by the petitioners to reject the plaint can be determined only after full trial. The bar under Order VII Rule 11 CPC has to be considered only based on the averments made in the plaint, not on the averments made by the petitioners/ defendants. Apart from that, all the averments made in the plaint and the right of partition of the parties to the suit, have to be adjudicated only by way of letting oral and documentary evidence by both the parties. Therefore, this court is of the view that, the learned Trial Judge has passed the well reasoned order and has rightly dismissed the petition,



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seeking reject the plaint and I find no infirmity to interfere over the same.

Hence, the civil revision petition is liable to be dismissed.

8. Accordingly, the civil revision petition is dismissed and the impugned order passed by the Trial Court is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

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Internet : Yes/No

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To

1.The III Additional District Judge, Coimbatore.



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