



C.R.P.(PD).No.1633 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.1633 of 2021

and

C.M.P.No.12695 of 2021

Chinnasamy

... Petitioner

VS

1.R.Sivasakthi Ganesh

2.Minor R.Rahul

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside Fair and Final Orders dated 28.10.2020 passed in I.A.No.56 of 2018 in O.S.No.138 of 2017 on the file of III Additional District Judge, Salem.

For Petitioner : Ms.D.Jeevitha
for Mr.R.Nalliyappan

For Respondents : No Appearance

ORDER



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Aggrieved by the order dismissing the petition filed by the petitioner seeking rejection of plaint, he has come by way of this civil revision petition.

2. The respondents herein filed a suit seeking partition of their 3/18 share in the suit properties, which were described in 10 items in the schedule to the plaint. The respondents also sought for declaration in respect of various Sale Deeds executed by their grandfather Ku.C.Venkatachalam and one Thamarai Kannan in favour of various defendants in the suit.

3. The petitioner herein, who purchased the portion of Item 6 of the suit properties from Thamarai Kannan, who was arrayed as 3rd defendant in the suit has filed the instant application seeking rejection of the plaint. According to the petitioner, the Item-6 of the suit properties is the self acquired property of the said Thamarai Kannan and therefore, the suit for partition filed by the respondents was not maintainable. It was also claimed by the petitioner that the sale in his favour was effected as early as 21.03.2006 and the present suit has been filed only on 01.06.2017 beyond the period of 3 years. Therefore, the suit prayer in so far as against the petitioner is concerned is barred by



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limitation.

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4. The respondents herein filed counter affidavit and resisted the application for rejection of plaint on the ground that the plaint can be rejected only based on the averments found in the plaint and plaint documents and defence raised by the petitioner/8th defendant cannot be taken into consideration. It was also averred by the respondents that the suit filed by them questioning the Sale Deed in favour of the petitioner was filed within 3 years from the date of acquiring knowledge about the sale in favour of the petitioner and therefore, the suit was within time. It was also averred by the respondents that the character of the property can be decided only at the time of trial based on evidence and hence, the petition filed for rejection of the plaint was not maintainable.

5. The Trial Court on consideration of the averments found in the petition as well as counter affidavit, rightly came to the conclusion that whether the suit property was the separate property of petitioner's vendor or ancestral property is the question which has to be decided based on evidence



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at the time of final disposal of the suit. It was also observed by the Court below that prayer in the suit questioning the sale deed in favour of petitioner was made within 3 years from the date of knowledge. Whether the respondents acquired knowledge about the sale deed in favour of petitioner within 3 years immediately preceding the presentation of the plaint, is a disputed question of fact and the same can be decided only at the time of full fledged trial. Therefore, the petitioner has not made out any case to reject the plaint only based on the averments found in the plaint and plaint documents.

6. Further, the petitioner is claiming right over the portion of the suit properties in Item No.6 of the plaint schedule properties. It is settled law plaint cannot be rejected partially. When the petitioner is not having any right in respect of other items of suit property, the present application filed by him to reject the plaint as a whole is not at all maintainable. In view of the settled position of law, this Court is not inclined to interfere with the order passed by the Courts below dismissing the petition to reject the plaint.

7. Accordingly, the Civil Revision Petition is dismissed. No costs.



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Consequently, the connected civil miscellaneous petition is closed.

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

To

The III Additional District Judge,
Salem.



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S.SOUNTHAR, J.

dm

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