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C.R.P.No.950 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.950 of 2021 and
C.M.P.No.7682 of 2021

1.Mrs.M.Anusuya
2.Ms.M.Hemahitha

... Petitioners

Vs.

1.Mrs.Amirtham (Died)
2.K.Nalini
3.Mrs.Sujini Elango
(R-1 died, Petitioners 1 &2 and R-2 &R3
(who are already on record) are LR's of the
deceased R-1 Viz., Mrs.Amirtham as per the
memo dated 08.02.2024 and vide Court order
dated 09.02.2024 made in CRP.No.950/2021

4.K.Rajasekaran
5.V.Arumugam
6.M/s.Do Well Engineering
D.No.471. Kamarajar road,
Coimbatore-641 009.

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 04.02.2020 passed in IA.No.1 of 2019 in O.S.No.361 of 2014 on the file of the IV Additional District and Sessions Court, Coimbatore.

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C.R.P.No.950 of 2021

For Petitioners	: Mr.S.Mukunth Senior Counsel for M/s.Sarvabhauman Associates
For respondent 1	:Died
For respondent 2, 4 to 6	:Addressee cannot be located
For respondent 3	: Notice served

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the application filed by the petitioners seeking to reject the plaint.

2. The 1st respondent herein filed a suit seeking partition of suit A and B schedule properties and also for declaration that the restriction of life estate imposed on the plaintiff over portion of suit schedule property, covered by partition deed dated 20.08.2008 which is described as schedule C, is not valid and binding on the plaintiff.

3. The 1st respondent also sought for declaration that settlement deeds dated 08.07.2010 registered as Document Nos.2989 and 2406 of 2010 were not valid. The 1st respondent also sought for injunction restraining the petitioners from encumbering or alienating the suit properties.



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4. The petitioners, who have been arrayed as defendants 1 and 2 in the suit filed instant application for rejection of the plaint on the ground that challenge made to the partition dated 20.08.2008 in the suit in the year 2014 was hopelessly barred by limitation. The Trial Court came to the conclusion that plea of limitation raised by the petitioners is a disputed question of fact and law and therefore, it requires evidence.

5. It is settled law that plaint can be rejected only based on the averments found in the plaint. A perusal of the plaint filed by the 1st respondent would suggest that she relied on Varthamana agreement dated 06.01.2009 entered with father of the petitioners namely A.D.Manoharan. It is her specific case that parties mutually agreed that recitals in the partition deed restricting the right of 1st respondent was not valid and 1st respondent was entitled to enjoy the property as absolute owner. Whether the understanding pleaded by the 1st respondent based on Varthamana agreement is true or not is a matter for evidence and the same cannot be decided at the time of considering the petition for rejection of the plaint. Therefore, the Trial Court



rightly came to the conclusion that the prayer for rejection cannot be granted at this stage.

6. Even otherwise, the prayer in respect of restriction of life estate as per the partition deed is only one among several prayers made by the 1st respondent. The main prayer of the 1st respondent is partition. The suit properties which are described as schedule A to C in the plaint. The cause of action for relief of partition is continuing one. The partition deed dated 20.08.2008 relied on by the petitioners is only in respect of C schedule. Therefore, on the basis of the plea raised by the petitioners, the entire plaint cannot be rejected. Therefore, I do not find any error in the order passed by the Court below dismissing the petition for rejection of the plaint filed by the petitioners. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20.02.2024

Index : Yes / No
Internet : Yes / No
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To
The learned IV Additional District and Sessions Court, Coimbatore.



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S.SOUNTHAR, J.

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