



WEB COPY



C.R.P.(NPD).No.1157of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.1157 of 2021
and C.M.P.No.8882 of 2021

1.R.Ganesan
2.G.Banumathi
3.G.Prabhu Kumar

... Petitioners

VS

1.S.Jothimani
2.J.Maheswari

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 27.07.2020 in I.A.No.3 of 2019 in O.S.No.314 of 2018 on the file of the I Additional District and Sessions Judge, Coimbatore District by allowing the present Civil Revision Petition.

For Petitioners : Mr.N.C.Ashok Kumar
for T.Balaji

For Respondents : Mr.K.Balamurali
for M/s.Shivakumar and Suresh
for R1
R2-unclaimed



WEB COPY



C.R.P.(NPD).No.1157of 2021

ORDER

The Civil Revision Petition is filed against the dismissal of the petition filed by the revision petitioner seeking rejection of the plaint.

2. The first respondent herein filed a suit for partition of 1/3rd share in respect of two items of properties.

3. The petitioners who were arrayed as defendants 1, 3 and 4 have filed a petition to reject the plaint on the ground that item No.1 of the properties were sold to various 3rd parties under sale deeds signed by the first respondent, the petitioners and other siblings. Suppressing the said sale deeds executed by her, the first respondent laid a suit claiming 1/3rd share in the suit property. Therefore, it is the submission of the learned counsel even on the date of filing of the plaint, item No.1 of the suit property was not available for partition.



4. The learned counsel further submitted that item No.2 of the property originally allotted to siblings of the contesting parties namely Palanisamy and he died unmarried. Therefore, his property devolved on his class 1 heir/mother namely Palaniammal. The mother of the parties during her lifetime executed a settlement deed dated 13.10.2004, settling the portion of item No.2 in favour of 1st petitioner and 2nd respondent in the suit. It is also stated that the remaining portion of item No.2 were sold to 3rd parties by petitioners as well as respondent on 23.03.1994. Hence, the learned counsel further submitted that even item No.2 was not available for partition on the date of filing of the suit. The first respondent suppressing all these documents filed the suit claiming 1/3rd share in the suit property and hence the plaint is liable to be rejected on the ground of suppression of material facts.

5. The trial Court dismissed the application for rejection of the plaint on the ground that such application has to be decided based on the averments found in the plaint and the Court cannot refer to the defence or documents relied on by the petitioners. It is also stated that the issues raised by the petitioners can be decided only at the time of trial.



WEB COPY

6. As far as item No.1 of the suit property is concerned, it is the case of the petitioner that the entire item No.1 of the suit property was sold to the 3rd parties by petitioners and respondents 1 and 2 by way of registered sale deeds and therefore, the same is not available for partition. In the counter to the petition for rejection of the plaint, it was claimed by the first respondent that her signature in the sale deed relied on by the petitioners has been forged. Nevertheless, till date the first respondent has not filed any suit to set aside the sale deed allegedly executed by her.

7. In such circumstances, the entitlement of the first respondent to claim share in the item No.1 of the suit property is very much doubtful. However, the plaint cannot be rejected in part in respect of item No.1 of the suit property alone.

8. As far as item No.2 of the suit property is concerned, it is the case of the petitioners that the portion of the suit property was sold to 3rd parties by petitioners as well as respondents 1 and 2 by way of registered sale deed. In respect of the remaining portion of item No.2, it is the specific case



C.R.P.(NPD).No.1157of 2021

of the petitioners that the same was settled by mother of the parties namely Palaniammal in favour of first petitioner and the second respondent. In her counter to the petition to reject the plaint, it was claimed by the first respondent/plaintiff that she was not aware of the settlement deed allegedly executed by Palaniammal and she denied the execution. Whether settlement deed allegedly executed by Palaniammal in favour of first petitioner and second respondent are valid document or not is a matter for trial. When settlement deed is impugned by the first respondent/plaintiff, it is for the petitioners who rely on the settlement deed to prove the same in the manner known to law. Therefore, validity and genuineness of the settlement deed allegedly executed by mother of Palaniammal cannot be decided at the stage of application for rejection of the plaint.

9. As rightly pointed out by the trial Court, at the time of considering the application for rejection of the plaint, the Court should go by the averments in the plaint and it cannot rely on the defence raised by the defendants and the documents produced by him.



C.R.P.(NPD).No.1157of 2021

10. I do not find any error in the order passed by the trial Court, dismissing the application for rejection of the plaint. Accordingly, the Civil Revision Petition stands dismissed.

11. Having regard to the fact that suit for partition was filed by the first respondent in the year 2018, this Court is inclined to issue a direction to the trial Court to dispose the suit as expeditiously as possible. It is made clear the issues raised by the parties shall be decided on it's own merits based on evidence to be let in by the parties, without being influenced by anything observed in this order. No costs. Consequently, connected miscellaneous petition is closed.

04.03.2024

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



C.R.P.(NPD).No.1157of 2021

To

WEB COPY

The I Additional District and Sessions Judge,
Coimbatore District.



WEB COPY



C.R.P.(NPD).No.1157of 2021

S.SOUNTHAR, J.

ub

C.R.P.(NPD).No.1157of 2021

04.03.2024