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CRP NO.1892 OF 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2024

CORAM

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

CRP NO.1892 OF 2023
AND CMP NO.12072 OF 2023

Periyathambi ... Petitioner / Petitioner /
Defendant

Vs.

1.Sivanantham
2.Raakiyannan
3.Ramasamy ... Respondents / Respondents/
Plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and final order dated March 30, 2022 passed in I.A.No.2 of 2022 in O.S.No.292 of 2019 on the file of District Munsif Court at Anthiyur.

For Petitioner : Ms.D.Jeevitha

ORDER

This Civil Revision Petition is directed against the Order dated March 30, 2022 passed in I.A.No.2 of 2022 in O.S.No.292 of 2019 by the 'learned District Munsif, Anthiyur' [henceforth 'Trial Court' for brevity].



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2. For the sake of convenience hereinafter the parties will be referred to as per their array before the Trial Court. The revision petitioner is the defendant and the respondents are the plaintiffs in the Suit in O.S.No.292 of 2019 before the Trial Court.

3. The case of the plaintiffs is that the Suit Property originally belonged to one Muthu Gounder and the defendant jointly. Thereafter, Muthu Gounder and the defendant orally partitioned the Suit Property. As per the oral partition, the plaintiffs' father-Muthu Gounder was allotted northern side and the defendant was allotted southern side of the Suit Property. The plaintiffs and the defendant are enjoying the Suit Property accordingly by putting up construction. In the meantime, Muthu Gounder passed away on November 24, 1998 leaving behind the plaintiffs and his wife-Pappathi as his legal heirs. The mother of the plaintiffs namely Pappathi passed away on June 1, 2005 leaving behind the plaintiffs, as her legal heirs. Since there are no written documents between the plaintiffs and the defendant, the plaintiffs requested that the defendant executed a registered Partition Deed. Despite repeated demands, the defendant has refused to come forward to execute a registered Partition Deed. Hence, the plaintiffs filed a Suit for partition and permanent



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injunction.

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4. The defendant filed written statement stating that the Suit Property belonged to the defendant as his ancestral entitlement. The plaintiffs' father Muthu Gounder, was working under the defendant and stayed in the Suit Property. Neither the plaintiffs nor their mother were residing in the Suit Property. The plaintiffs are not in possession and enjoyment of the Suit property. Accordingly, he prayed to dismiss the Suit.

5. In the meantime, the defendant filed an Interlocutory Application in I.A.No.2 of 2022 in O.S.No.292 of 2019 under Order VII Rule 11 and read with Section 151 of the Code of Civil Procedure, 1908, seeking to reject the plaint in O.S.No.292 of 2019 stating that the Suit ought to have been filed with a prayer of Declaration of Title. Further, Court Fee paid by the plaintiffs is incorrect.

6. The Trial Court after hearing both sides concluded that the question as to whether the plaintiffs and the defendant entered into oral partition can be decided only at the time of trial. The Trial Court further



opined that the plaint cannot be rejected on the ground that the plaintiffs did not ask for the relief of declaration and accordingly, dismissed the Interlocutory Application.

7. Ms.D.Jeevitha, learned Counsel appearing for the revision petitioner submits that the plaint does not disclose the cause of action; that the Court Fee paid by the plaintiffs is incorrect; that in the absence of prayer for declaration, the Suit filed for partition is not maintainable. Accordingly, she prays to allow the Civil Revision Petition.

8. This Court has considered the arguments advanced by the learned counsel appearing for the revision petitioner and has perused the materials available on record.

9. According to the plaintiffs, though the plaintiffs and the defendant are enjoying separate portion for their convenient by way of an oral arrangement, there is no actual partition takes place. Hence, the plaintiffs and the defendant are joint owners of the Suit Property. Further, in Paragraph No. 7 of the plaint, the plaintiffs have narrated the cause of action. This Court is of the view that whether the cause of action



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as stated in the plaint is true or not can be decided only at the time of trial. The question as to whether a portion of the Suit Property being enjoyed as per convenience of the parties in an oral arrangement amounts to 'partition' or not, can be decided only after conclusion of trial considering the cumulative facts and circumstances of the case [See **P.Kaliappa Gounder -vs- V. Muthusamy Mudhaliar**, reported in AIR 1987 Mad 24]. It is settled law that the plaintiff, the *dominus litis*, has right to frame the Suit as per their wish and they can seek relief as per their needs. No one, including the Court, can direct the plaintiff to ask a particular relief or not to ask a particular relief. It is upto the plaintiff to seek or not to seek a particular prayer. After trial, if the Court comes to the conclusion that the plaintiff is entitled to the reliefs sought for, ultimately the Court will decree the Suit. If not, the Court will dismiss the Suit. In this case, the petitioner/defendant has not made out a case under Order VII Rule 11 of the Code of Civil Procedure, 1908 in the Interlocutory Application. Accordingly, the Trial Court dismissed the same. This Court does not find any illegality or irregularity in the Order passed by the Trial Court in the Interlocutory Application.



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10. In the result, this Civil Revision Petition is dismissed.

Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK

To

The District Munsif Court
Anthiyur.



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R.SAKTHIVEL, J.

TK/MSM

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