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C.R.P.(PD) No.2614 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2024

CORAM

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD) No.2614 of 2024

AND

C.M.P.No.13741 of 2024

D.Doss

... Petitioner

Vs

1.B.Seetha Lakshmi

2.B.Dilli Babu

3.B.Hemakumar

4.B.Bhuvaneswari

5.Vasantha

6.M.Rajesh

7.M.Saridha

8.M.Selviamma

9.D.Pazhani

10.D.Devan

11.D.Jaya

... Respondents

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Civil Revision Petition filed under Section 115 of CPC praying to set aside the fair and decretal order dated 26.02.2024 made in I.A.No.6 of 2023 in O.S.No.3417 of 2022 by the learned XXII Additional Judge, City Civil Court at Allikulam, Chennai.

For Petitioner : Mr.K.Premkumar

ORDER

This civil revision petition has been filed against the fair and decretal order dated 26.02.2024 passed by the learned XXII Additional Judge, City Civil Court at Allikulam, Chennai, in I.A.No.6 of 2023 in O.S.No.3417 of 2022.

2. The 1st defendant is the civil revision petitioner. The properties admittedly belonged to one Dhanapal who has five sons, viz., Doss, Barani, Marimuthu, Pazhani and Devan. Pleading that the 1st defendant-Doss had taken away the property situated in Chennai by way of a settlement deed dated 20.05.2005 said to have been executed by the deceased Dhanapal in his favour, a suit in O.S.No.3417 of 2022 for partition and declaration came to be filed.



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3. The relationship between the parties is not in dispute. The 1st defendant entered appearance and also filed his detailed written statement and thereafter, took out an application in I.A.No.6 of 2023 for rejection of plaint in O.S.No.3417 of 2022.

4. The 1st ground is that as he became the owner of the property by way of a settlement deed dated 20.05.2005, a suit for partition is not maintainable. The 2nd ground is that the suit being one for partition of family properties, all the properties owned by Dhanapal must be included in the schedule of property.

5. The learned Judge rejected the application for rejection of plaint on 26.02.2024, against which, the present civil revision petition has been filed.

6. Heard Mr.K.Premkumar, learned counsel for the civil revision petitioner.

7. Insofar as the 1st ground raised by the petitioner/1st defendant is



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concerned, it is his case that he became the owner of the property by way of a settlement deed. Since the settlement deed has been denied by the plaintiffs, it is the duty of the 1st defendant to give evidence to prove his case and it cannot be a ground for rejection of the plaint.

8. Insofar as the 2nd ground is concerned, it is true that the schedule of property in a suit for partition should contain all the properties of the deceased and in the instant case, it is alleged that it is not so. However, that cannot be a ground for rejection of the plaint. In any event, in the suit proceedings, the plaintiffs or the 1st defendant can always include the properties by way of an amendment application. When the plaint can be amended to include the properties, that itself shows that failure on the part of the plaintiffs to include all the properties of the deceased in the suit schedule cannot be a ground for rejection of the plaint.

9. Hence, it is left open to the plaintiffs or the 1st defendant to include the Padappai property also in the partition suit. The observations made by the learned Trial Judge as regards the settlement deed are only a *prima facie* view for the disposal of the interlocutory application. It is for the 1st defendant to prove the



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settlement deed, during the course of trial. It is made clear that the observations made in this order will not bind the Trial Court at the time of final disposal of the original suit.

In fine, this civil revision petition stands dismissed with the above observations. No costs. Connected C.M.P. is closed.

19.07.2024

gya

Index : Yes/No

Neutral Citation : Yes/No

To
The learned XXII Additional Judge
City Civil Court at Allikulam
Chennai



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V.LAKSHMINARAYANAN, J.

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