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C.R.P.(PD).No.2780 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 05.08.2024

Coram

**THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN**

C.R.P.(PD). No.2780 of 2024 &  
C.M.P.No.14729 of 2024

Rama

... Petitioner

-Versus-

1.Visalakshi

2.D.Saravanan

3.D.Ramu

4.D.Senthil

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order passed by the Additional District Court, Dharmapuri dated 31.10.2023 made in I.A.No.4 of 2023 in O.S.No.131 of 2020.

*For Petitioner : Mr.J.Pradeep*

**ORDER**

This civil revision petition arises against the order of the learned Additional District Judge, Dharmapuri in I.A.No.4 of 2023 in O.S.No.131 of 2020 dated 31.10.2023.



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2. O.S.No.131 of 2020 is a suit for partition filed by the first respondent herein. The civil revision petitioner is the 12<sup>th</sup> defendant. According to her, the first respondent, who was the 20<sup>th</sup> defendant in O.S.No.46 of 2016 on the file of the Sub Court at Harur, has presented the suit in O.S.No.131 of 2020 seeking partition and separate possession. The respondents/defendants 9 to 11 were the defendants 9 to 11 in O.S.No.46 of 2016.

3. In O.S.No.46 of 2016, a compromise had been arrived at between few of the parties to the suit. The plaintiff and other sharers of the family were also parties to the suit but not to the compromise. The defendants 9 to 12 sought for rejection of the plaint in the present suit pleading it had been barred by virtue of the compromise entered into between the parties in O.S.No.46 of 2016. They marked Ex.P1 to Ex.P5 before the trial court.

4. The first respondent/plaintiff filed a counter stating that the plaintiff and the defendants 18 to 22 are the children born to one Muthusami through his second wife Muthiammal. She would also plead that the deceased Duraisamy, the deceased Raji and the seventh defendant are the children of the deceased Muthusamy through his first wife Sombiammal. She would plead that



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Muthusamy had died intestate in the year 1982 and the plaintiff's mother passed away in the year 1995. She would plead that without the consent of the other coparceners, inter se partition deed had been entered into between the civil revision petitioner and the respondents 2 to 4. The plaintiff would state that these documents are not binding on her because she is not a party to the same.

5. On receipt of the counter, the learned trial judge came to a conclusion that there were triable issues and therefore dismissed the petition. Against which the present civil revision petition.

6. I have heard Mr.J.Pradeep for the civil revision petitioner and have gone through the records.

7. The law insofar as rejection of plaint is concerned, the Court has to take the averments made in the plaint to be true and thereafter, come to a conclusion that either the suit is barred or it lacks cause of action. At that stage, the defence that is taken by the defendants or the fact that the plaintiff might not finally succeeded in the suit are absolutely irrelevant. This is because it is a plea in demurrer, and at that stage, all that the Court has before it is the plaint and the plaint documents alone.

8. I am surprised that the learned Additional District Judge permitted the defendants to mark the documents during the course of the application. This



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indirectly permits the parties to by-pass the rule that at the time of rejection of the complaint, it is only the complaint documents and the complaint that matters.

9. Mr.J.Pradeep would contend that the plaintiff, having compromised in O.S.No.46 of 2016 on the file of the learned Sub Court at Harur, is not entitled to continue the present suit.

10. A perusal of the complaint reveals that the plaintiff claims 5/45<sup>th</sup> share in the property by virtue of being a daughter of Muthusamy through his first wife. Nowhere in the complaint, has she conceded to the fact that she has executed a document in favour of the defendants 9 to 12. Under such circumstances, as the complaint reveals the cause of action, it is not liable to be rejected.

11. I do not find any reason to take a different view than the one taken by the court of learned Additional District Judge at Dharmapuri in I.A.No.4 of 2023 in O.S.No.131 of 2020. Accordingly, this civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

05.08.2024

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Index : Yes/No  
Speaking Order/Non-speaking order  
Neutral Citation : yes/No



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To

1.The Additional District Court, Dharmapuri



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V.LAKSHMINARAYANAN, J.

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