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C.R.P.(PD).No.3182 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.3182 of 2024
and C.M.P.No.17032 of 2024

1. V.Barani

Represented by her Power agent,
P.Venugopal

2. P.Venugopal

.. Petitioners

Versus

1. N.Jothi

2. N.Rangaraj

.. Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to call for records pertaining to order passed in I.A.No.16 of 2024, dated 26.03.2024 in I.A.No.15 of 2023 in O.S.No.38 of 2008 pending on the file of the learned Principal Sub Judge, Puducherry and to set aside.

For Petitioner : Mr.R.Ganesan

ORDER

This Civil Revision Petition is filed at the instance of the petitioners/defendants.



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2. O.S.No.38 of 2008 was presented seeking for the relief of permanent injunction restraining the petitioners/defendants from interfering with the peaceful possession and enjoyment of the property. It is the case of the respondents/plaintiffs that they purchased the property on 31.05.2005 and in May, 2006, the petitioners/defendants attempted to interfere with the possession of the property. According to them, the property is situated in Kirumampakkam village of Bahour commune in Puducherry. Summons were served in the suit and the petitioners/defendants entered appearance and filed a detailed written statement. According to the petitioners/defendants, Courts in Puducherry do not have jurisdiction because the item No.2 of the property is situated in Tamil Nadu. Therefore, they would plead that Courts in Puducherry do not have territorial jurisdiction to try the suit.

3. The parties went for trial on the basis of these pleadings. It is not in dispute that the evidence is already over. At that stage, taking the very same plea, an application was filed in I.A.No.15 of 2023 on the ground that the Court does not have jurisdiction since they have not adhered to the provision of Section 17 of the Code of Civil Procedure. When the



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adjudication of this application is underway, the petitioners/defendants took out another application in I.A.No.16 of 2024. This is an application for appointment of an Advocate Commissioner to identify the suit property along with a Surveyor and to submit a report to the Court. It is pertinent to point out that I.A.No.16 of 2024 was taken in I.A.No.15 of 2023. After receipt of a counter from the respondents/plaintiffs, the application came to be dismissed. Against which, the present petition is filed.

4. Heard Mr.R.Ganesan, learned Counsel for the petitioners/defendants.

5. The point that Mr.R.Ganesan urged in the petition for rejection of plaint is that the Courts in Puducherry do not have territorial jurisdiction to try the suit for the properties which are situated in the state of Tamil Nadu. He would state that if an Advocate Commissioner is appointed, it will bring out this fact to the knowledge of the Court and therefore, he would plead that the learned Judge erred in dismissing the application.

6. I have carefully considered the arguments of Mr.R.Ganesan.



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7. The principle of law governing the rejection of plaint is that the Court has to go through the averments of plaint and plaint alone and if it is necessary, it will look into plaint documents. The defence, however sterling it may be in character, of the defendant is absolutely irrelevant while deciding such an application. This is because an application for rejection of plaint is a plea in demurrer and in a plea in demurrer, the duty of the Court is to take the averments made to be true and thereafter see, whether any of the grounds under Order VII Rule 11 of the Code of Civil Procedure are made out.

8. The averment that the properties are situated in Tamil Nadu and not in Puducherry is a plea of the petitioners/defendants. The respondents/plaintiffs have very clearly mentioned that the properties are situated in Kirumampakkam village which is very much in Puducherry. If this is the averment in the plaint, the Court below did not commit any error in reading the plaint to be true and thereafter rejecting the application for appointment of an Advocate Commissioner on account of the fact if an Advocate Commissioner is appointed, then, it will be aiding the



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petitioners/defendants in his case which certainly is not the scope of the Order VII Rule 11 of the Code of Civil Procedure.

9. Apart from that, there is no question of any evidence being recorded under Order VII Rule 11 of the Code of Civil Procedure. All that the Court, as pointed out above, will see is the plaint and plaint alone. A reading of the plaint convinces me that the property is situated within the jurisdiction of Puducherry. If the petitioners/defendants so wishes to prove that the property is in Tamil Nadu, it is always open to them to take such steps as are entitled in law. Certainly, an application for appointment of an Advocate Commissioner, that too pending disposal of an application for rejection of plaint, is not maintainable.

10. In the light of above discussion, since I do not find any reason to entertain this Civil Revision Petition, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

12.08.2024

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no



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To

The Principal Sub Judge,
Puducherry.



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V.LAKSHMINARAYANAN, J.

grs

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