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C.R.P. No. 3565 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2024

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THE HONOURABLE MR. JUSTICE P.DHANABAL

C.R.P. No. 3565 of 2022
and
C.M.P. No. 18942 of 2022

1. Vasantha

2. Giri

3. S.Meenakshi Kalathil

4. Vijayalakshmi ... Petitioners / Petitioners / Defendants 1 to 4

Vs.

1. S.Durai ... 1st Respondent / 1st Respondent / Plaintiff

2. Pradeep

3. Uma Maheswari

4. Aarthi ... Respondents 2 to 4 / Respondents 2 to 4
/ Defendants 5 to 7

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, 1950, to set aside the fair and decreetal order dated 27.07.2022 passed in I.A. No. 5 of 2020 in O.S. No. 177 of 2019 on the file of the Principal District Court, Kancheepuram at Chengalpattu.



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For Petitioners : Mr. N.Manoharan
For R1 : Mr. S.Anburaja
For R2 to R4 : Mr. W.M.Abdul Azeez

ORDER

This Civil Revision Petition has been preferred as against the order dated 27.07.2022 passed in I.A. No. 5 of 2020 in O.S. No. 177 of 2019 on the file of the Principal District Court, Kancheepuram at Chengalpattu, wherein, the petitioners herein have filed a petition before the trial court to reject the plaint under Order 7 Rule 11(a) of C.P.C. The Trial Court has dismissed the petition. Against which, the present Civil Revision Petition is filed.

2. The case of the petitioners is that, they are the defendants in the main suit, and the 1st respondent herein has filed a suit for the relief of partition and separate possession. The plaint does not disclose cause of action, and the suit is also to be dismissed on the ground of *res judicata*. As per the plaint averments, the suit properties were owned by their father, and the same are self acquired properties. During the lifetime of their father, he executed a Will dated 04.04.2013 and as per the Will, the plaintiff is not entitled to share over the properties directly, but get the benefits only after the sale proceedings of



the suit properties. The 1st and 3rd petitioners are appointed as Executors and Administrators of the suit properties. The Will was also probated through order dated 24.10.2016 of the Hon'ble High Court made in O.P. No. 9 of 2015. The 1st respondent/plaintiff also made as party to the above said Probate Proceedings. After the Probation Order passed by the High Court, the plaintiff cannot question the Will and this Court has no jurisdiction to deal with the same suit properties between the same parties. Therefore, the plaint is liable to be rejected.

3. The case of the respondents is that as per the Will, they are entitled to share over the property, and in the Probate Proceedings, the title of the property cannot be decided. Therefore, they filed the suit for partition based on the Will. The suit is only filed for partition, and in the Probate O.P., shares have not been declared by the Competent Court. Therefore, there is no question of *res judicata* would arise. The plea of *res judicata* can be decided only after trial by framing appropriate issues, and the plaint cannot be rejected at the threshold. Though, the 1st and 3rd petitioners were appointed as Executor of the Will to sell the property, they have not taken any steps, per contra, they are attempting to cheat the 1st respondent/plaintiff. Therefore, 1st respondent/plaintiff filed the suit for partition of his 1/6 share over the suit properties. Therefore, the petition is liable to be dismissed.



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4. Before the Trial Court, no oral or documentary evidences adduced on either side. The Trial Court, after hearing both sides, dismissed the petition. Aggrieved by the said order, the present Civil Revision Petition is filed.

5. The learned counsel appearing for the petitioners would contend that originally the suit properties belonged to the father of the petitioners/defendants. During his lifetime, their father executed a Will dated 04.04.2013 and as per the Will, the 1st respondent/plaintiff is not entitled to share over the properties directly, but he get the benefits only after the Sale Proceedings of the suit properties. As per the Will, the 1st and 3rd petitioners are appointed as Executor and Administrator and in respect of the suit properties, the decision shall be taken only by the 1st and 3rd petitioners. The said Will was probated through Hon'ble High Court by order dated 24.10.2016 in O.P. No. 9 of 2015. As per the said order of the Hon'ble High Court, the petitioners have been administering the suit properties. The 1st respondent/plaintiff has no right over the suit properties, and no right to claim the share over the suit properties, and he can get money after the Sale Proceedings of the suit properties. Therefore, when the matter was already decided by the Hon'ble High Court, the present suit for partition is barred by



the principle of *res judicata*, and there is no real cause of action for the suit.

Therefore, the plaint is liable to be rejected. When the petition was filed before the Trial Court for rejection of plaint, the Trial Court failed to consider the case of the petitioners and erroneously dismissed the petition. Therefore, the order passed by the Trial Court is liable to be set aside.

6. The learned counsel appearing for the respondents would contend that as per the Will, the 1st and 3rd petitioners have been appointed as administrators, but they have not taken any steps to sell the property and thereby, he filed the suit for partition over his 1/6 share. There is no denial by the petitioners in respect of his share. Since the 1st and 3rd petitioners being the administrators, have not taken any steps to sell the property, he filed suit for partition. The petitioners have taken plea of *res judicata* and the same cannot be decided at this stage and the suit cannot be rejected on the ground of *res judicata* at the threshold and it needs elaborate Trial. The Trial Court has passed the detailed and reasoned order and the same is proper. Therefore, the present revision petition is liable to be dismissed.

7. This court heard both sides and perused the materials available on record.



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8. In this case, the 1st respondent herein has filed a suit before the Trial Court for partition based on the Will dated 04.04.2013 and the said Will was also probated through this Court in the Proceedings of O.P. No. 9 of 2015. According to the petitioners, as per the Will, the 1st and 3rd petitioners have to take decision in respect of the property and they have to sell the property. The 1st respondent/plaintiff cannot claim right over the property, and he is only entitled to the Sale Proceedings of the property. Since, in this case, the Will is involved and the same has to be tested through trial in accordance with law. The plea of *res judicata* pleaded by the petitioners is also to be decided after full trial and not at the stage of dealing petition under Order VII Rule 11 of the C.P.C. and the plaint cannot be rejected at the threshold. It is well settled law that as far as rejection of plaint on the ground of *res judicata* is concerned, it cannot be decided without framing issues and without full trial, it cannot be decided. As far as the cause of action is concerned, the plaintiff pleaded the cause of action and after trial only the genuineness of the cause of action could be decided. In this context, the Trial Court, after elaborate discussion, correctly came to a conclusion that the plaint cannot be rejected at this stage, and it need elaborate trial. Therefore, there is no perversity or infirmity in the order passed by the Trial court and it does not warrant



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interference.

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9. In view of the aforesad discussions, this Court is of the opinion that the Civil Revision Petition has no merits and deserves to be dismissed. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

24.07.2024

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
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To

The Principal District Court,
Kancheepuram at Chengalpattu.



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P.DHANABAL, J.,

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