



C.R.P.(PD)No.3459 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.3459 of 2022

and

C.M.P.No.18443 of 2022

A.Snekalatha Naher

.. Petitioner

Vs.

1.A.Thulasingam

2.N.Bhuvaneswari

3.R.Sasikala

4.S.Thirunavukkarasan

5.J.Maheshwari

6.S.Jayalakshmi

7.R.Arumainathan

8.R.Veeraraghavan

9.Banu

10.Chandra



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11.Gunapushanam

12.Thangammal

13.T.Rajammal

14.Yasodha

15.Jeeva

16.B.Jegan

17.B.Yuvaraj

18.B.Dilliraj

19.D.Lakshmi

20.D.Mari

21.D.Lakshmanan

22.D.Suresh

23.Kumar

24.Gnanammal

25.Rama

26.P.Manickammal

27.S.Parvathy

28.P.Vijaya

.. Respondents

Prayer : The Civil Revision Petition is filed under Article 227 of the



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Constitution of India, to set aside the order dated 21.03.2022 passed by the learned Principal Subordinate Judge at Chengalpattu in I.A.No.377 of 2018 in O.S.No.75 of 2018.

For Petitioner : Mr.PL.Narayanan

For RR1 to 6 : Mr.M.Thangadurai

For RR8 to 11, 26 & 27 : Mr.R.Prabakar

For RR7, 13, 14,26 : Served, No Appearance

For RR12, 15 to 18, 20,
21, 23 to 25 & 28 : Not Ready in Notice

R19 : Died

R22 : Refused

ORDER

The present Civil Revision Petition arises against an order passed by the learned Principal Subordinate Judge at Chengalpattu in I.A.No.377 of 2018 in O.S.No.75 of 2018, dated 21.03.2022.

2. O.S.No.75 of 2018 is a suit for declaration, partition and injunction.

3. There is no dispute that the property belonged to one Ekambaram. Ekambaram had left behind his legal heirs, the plaintiffs, who are his daughters and sons. Insofar as the 23rd defendant is concerned, who is the



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civil revision petitioner, she had purchased the shares from the sons and claims to be in occupation of the property. In order to enforce a partition, the present suit had been filed by the daughters.

4. In this suit, an application was taken out for rejection of plaint. The ground on which the rejection of plaint was argued was that there is no cause of action for the suit and the same is barred by limitation. The learned trial Judge dismissed the petition and aggrieved by the same, the present revision has been filed before this Court.

5. Heard Mr.PL.Narayanan, appearing on behalf of the petitioner and Mr.R.Prabakar, appearing on behalf of respondent Nos.8 to 11, 26 and 27.

6. Mr.PL.Narayanan would contend that the partition suit has come about by adroit and clever drafting of the plaint. He would draw my attention to the Paragraph No.5 of the plaint and urge that the plaintiffs, who had been regularly visiting the property from the year 2003 onwards should have been aware that the 23rd defendant is in possession of the same. He would also contend that from reading of Paragraph No.6 would show that



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the plaintiffs have conceded that the 23rd defendant had visited the property and therefore, she is deemed to be in possession of the same and the relief that should have been sought for is for recovery of possession. On these grounds he would state that the plaint is liable to be rejected.

7. I have carefully considered the submissions of Mr.PL.Narayanan.

8. The general principles of rejection of plaint is that it is a plea in demurrer and the averments made in the plaint have to be taken at its face value. While taking at its face value, if it does not disclose the cause of action, then, the provisions of Order VII Rule 11 of the Code of Civil Procedure will apply.

9. It is the specific case of the plaintiff that Ekambaram had purchased the property on 10.01.1955 and had four sons and four daughters. According to the plaintiffs, the 23rd defendant had purchased the property from the sons alone and not from the daughters. Even as per the plaint, it is pleaded that the property is a self acquisition of the deceased Ekambaram. If it is a self acquired property, then, going by the plaint and the applicable law, namely,



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the Hindu Succession Act, the daughters would also have the share in the property. It is to enforce that right that they presented the suit for partition. Therefore, to state that there is no cause of action for the plaint is not acceptable.

10. Turning to the next point of Mr.PL.Narayanan that as the plaintiffs have conceded that the 23rd defendant is in possession of the property, they should have sought for recovery of possession. For this point too, I have to go through Paragraph No.6 of the plaint. Paragraph No.6, merely, states that *"some third parties are inspecting the suit property and on questioning, they said that they are the representatives of the 23rd defendant"*.

11. The schedule of the property discloses that it is a vacant site to an extent of 28 cents. Therefore, the fact that the plaintiffs have stated that the representatives of the 23rd defendant are inspecting the property does not disclose that they have conceded that the 23rd defendant is in possession of the same.

12. On the contra, they have specifically pleaded that they are in joint



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possession of the property along with other co-sharers. A stranger purchaser cannot claim exclusive right over the property. The remedy for a stranger purchaser from other co-sharers is only a suit for partition. In case, the defendants plead limitation or ouster, this also requires evidence to be let in during the time of trial.

13. I can reject a plaint on the grounds of being barred by the limitation if the reading of the plaint itself discloses that the suit is barred. Reading of the plaint shows that till the year 2017, the property was not cultivated and was kept barren (wrongly typed in Paragraph No.5 as barred). Hence, filing of the suit in 2018 cannot be held to be time barred.

14. Therefore, in the light of the above discussion, I cannot take any exception to the order passed by the learned Trial Judge, the Civil Revision Petition stands dismissed. No costs.

15. At this stage, Mr.PL.Narayanan would make a submission that a direction may be given for an expeditious disposal of the suit. I notice that the parties are yet to complete the pleadings. On completion of the pleadings



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and filing of documents, any of the parties will be entitled to move this Court for a direction of an expeditious disposal. Consequently, connected Civil Miscellaneous Petition is closed.

25.04.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

V. LAKSHMINARAYANAN, J.

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To



The Principal Sub Court,
Chengalpattu

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