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C.R.P.No.3709 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.3709 of 2022 and
C.M.P.No.19612 of 2022

1.Ayyammal
2.Palamalaisamy
3.Savithri
4.Muthammal ... Petitioners

Vs.

1.Muthammal
2.Rajammal ... Respondents

PRAYER: Revision filed under Article 227 of the Constitution of India praying to set aside the fair order and decretal order dated 22.09.2022 passed by the Subordinate Judge, Metupalayam, dismissing I.A.No.5 of 2022 in O.S.No.47 of 2022 and allow I.A.No.5 of 2022 in O.S.No.47 of 2022.

For Petitioners : Mr.B.Hari Krishnan

For respondents : Mr.A.Muthukumar

ORDER

The defendants 2 to 5 are the petitioners before me.



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2. An application in I.A.No.5 of 2022 was filed for the purpose of rejection of plaint in O.S.No.47 of 2022. The case of the plaintiffs is that 45 years before the presentation of the plaint, the father of the plaintiffs, one Krishnasamy, purchased Item No.II of the suit property from one Krishnammal. On the basis of this sale, the revenue records were muted in favour of the plaintiffs' father, Krishnasamy. Krishnasamy was paying kists and enjoying the property in his own right. Krishnasamy died on 22.10.2014. He was predeceased by his wife Palaniammal on 28.10.2012. Taking advantage of the death of Krishnasamy, Palaniammal as well as Krishnammal, the defendants, who are the legal heirs of Krishnammal, attempted to interfere with the possession of the plaintiffs.

3. On an enquiry, the plaintiffs came to know that the legal heirs of Krishnammal and Samakkal had filed a suit for partition in O.S.No.162 of 2017 and obtained decree. They also registered the decree on the file of the Sub Registrar. Fearing dispossession and also seeking a declaration that the decree obtained by showing the suit property as a part of the schedule in O.S.No.162 of 2017 is null and void, the present suit for declaration and other reliefs were filed.



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4. On entering appearance, the defendants pleaded and moved an application in I.A.No.5 of 2022 for the rejection of plaint. Their plea in the said application was that, (i) there is no sale from Krishnammal in favour of Krishnasamy; (ii) the plaintiffs are not in possession of the property; (iii) the suit is barred by limitation; and (iv) in any event, the document on the basis of which the suit has been filed cannot be received in evidence.

5. After receiving a counter from the respondents therein, the learned Trial Judge dismissed the application on 22.09.2022. Hence, the revision.

6. Heard Mr.B.Hari Krishnan for the petitioners and Mr.A.Muthukumar for the respondents.

7. A perusal of the plaint shows that the plaintiffs plead that they are in possession of the property pursuant to a sale. Whether the sale deed can be received in evidence or whether it would be rejected are all matters that have to be decided at the time of trial. There is no dispute that Krishnammal was the owner of the property. The plaintiffs assert that



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Krishnasamy was in possession of the property for more than 45 years.

They would also plead that they have revenue records in favour of the plaintiffs to prove their possession. Admittedly, they are not parties to the suit in O.S.No.162 of 2017 on the file of the Subordinate Judge at Mettupalayam. The issues raised in the rejection of plaint are all matters which have to be gone into at the time of trial.

8. A reading of the plaint shows the existence of triable issues and of course it also reveals the cause of action. None of the pleas raised by the learned counsel for petitioners come within the scope of Order VII Rule 11 of the Code of Civil Procedure. Consequently, I do not find any reason to interfere with the order. It is always open to the defendants to raise all the defences available to them at the time of trial.

9. With the above observations, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
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The Subordinate Judge,
Metupalayam.



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V.LAKSHMINARAYANAN, J.

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