



C.R.P.(PD).No.3980 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.3980 of 2024
and C.M.P.No.21802 of 2024

Kumar @ Sivakumar

.. Petitioner

Versus

1. Gayathri

2. Suguna @ Suganya

.. Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and final orders, dated 03.04.2024 passed in I.A.No.6 of 2023 in O.S.No.1 of 2021 on the file of the Sub-Ordinate Court, Jayankondam and allow the above Civil Revision Petition.

For Petitioner : Ms.D.Jeevitha

ORDER

The first defendant in O.S.No.1 of 2021 is the civil revision petitioner.

2. O.S.No.1 of 2021 is a suit for declaration, permanent injunction and partition. In order to have the suit dismissed, an application was filed in



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I.A.No.6 of 2023 under Sections 11, 12 and 151 read with Order IX Rule 9 of the Code of Civil Procedure, 1908. The plea of the petitioner is that a similar suit was filed in O.S.No.240 of 2005 and the said suit was dismissed for default on 20.06.2013 and therefore, a fresh suit for partition is not maintainable. The learned Judge dismissed the petition. Hence this revision.

3. Heard Ms.D.Jeevitha, learned Counsel for the petitioner.

4. Cause of action for a suit for partition arises day to day. As long as the property remains joint and undivided either by a decree of partition or by a deed of partition, a sharer can present a suit seeking for the said relief. Furthermore, none of the provisions that are relied upon by Ms.D.Jeevitha namely, Section 11, 12 and 151 or Order IX Rule 9, enable a defendant to file a petition to dismiss the suit. Even if I were to treat I.A.No.6 of 2023 as an application for rejection of plaint, on going through the averments in the plaint, it is clear that the plaintiffs are claiming 1/3rd share in the suit property which has come into the hands of the first defendant. For the purpose of dismissal of the suit in limine, I have to take the averments



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made in the plaint to be true and come to a conclusion that there is no cause of action.

5. Ms.D.Jeevitha does not dispute the relationship between the defendants and the civil revision petitioner. The defendants are the daughters of the first defendant. If their plea in the plaint is to be taken to be true, the fact that they previously filed a suit for partition and that having been dismissed for default, does not prevent them to present a fresh suit again.

6. In order to press home the point, Ms.D.Jeevitha relied upon a judgment of this Court in ***G.Alagarsamy Vs. R.Seenivasan, 2012 (2) MWN (Civil) 52***. A careful perusal of the judgment shows that the Second Appeal arose from a suit for injunction. One was presented by the vendor and the second one was presented by the purchaser. Furthermore, it was not a case where the plaint was rejected. The parties went for trial, let in evidence and thereafter, the suit came to be dismissed on merits. Hence, the said judgment is inapplicable to the facts of this case.



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7. In the light of the above, this Civil Revision Petition is dismissed.

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No costs. Consequently, connected miscellaneous petition is closed.

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Index : yes/no

Speaking order/Non-speaking order

Neutral Citation : yes/no

grs

To

The Subordinate Judge,
Jayankondam.



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V.LAKSHMINARAYANAN, J.

grs

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