



CRP.No.3852 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRP.No.3852 of 2023

and

CMP.No.23813 of 2023

C.B.Rakesh Bandari

...

Petitioner

1.Anjula Mishra

2.Manjula Saini

3.Sanjula Puri

...

Respondents

PRAYER : This civil revision petition has been filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 11.09.2023 made in I.A.No.1 of 2023 in O.S.No.51 of 2023 on the file of I Additional District and Session Court, Tiruppur and allow this Civil Revision Petition on the merits of the case.

For Petitioner

...

Mr.K.Krishna

For Respondents

...

Mr.R.Bharath Kumar

ORDER

This civil revision petition has been filed to set aside the fair and decreetal order dated 11.09.2023 made in I.A.No.1 of 2023 in O.S.No.51 of 2023 on the file of I Additional District and Sessions Court, Tiruppur.



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2.The learned counsel appearing for the petitioner submitted that the petitioner is the first defendant and the first respondent is the plaintiff and the second and third respondents are the defendants 2 & 3. The plaintiff filed the suit in O.S.No.51 of 2023 on the file of the Principal District and Sessions Court, for partition. In the suit, the petitioner/first defendant filed I.A.No.1 of 2023 under Order 7 Rule 11 (a) and (b) CPC to reject the plaint on the grounds that out of 32 items claimed for partition in the suit, the title of the properties for schedule T, U and W are not as claimed by the first respondent/plaintiff and schedule A, B and C were already sold to the third parties and the petitioner and his father having 50% share each in the partnership firm namely M/s. Bhandari Hosiery and Textile Mills. Some of the properties stand in the name of the partnership firm and all the properties are not amenable for partition. It has to be amended by the first respondent/plaintiff but he has not amended the plaint and also not filed any encumbrance certificate to show that the properties stand in the name of the family. Under these circumstances, this petition has been filed for rejection of the plaint which was not properly considered by the trial Court



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and the same was dismissed by passing the impugned order. Hence, it is challenged.

3.The learned counsel appearing for the respondents supported the impugned order and sought to dismiss the civil revision petition.

4.I have considered the matter in the light of the submission made by the learned counsel on either side and perused the material available on record.

5.On perusal of the record, it is noticed that the petitioner is the first defendant and the first respondent is the plaintiff and the second and third respondents are the defendants 2 & 3. The plaintiff filed the suit in O.S.No.51 of 2023 on the file of the Principal District and Sessions Court, for partition. In the suit, the petitioner/first defendant filed I.A.No.1 of 2023 under Order 7 Rule 11 (a) and (b) CPC to reject the plaint and it is not disputed that all the properties are not amenable for partition. It is the



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claim of the petitioner/first defendant that schedule A, B and C properties were sold to the third parties and he is having 50% share in the M/s.Bhandari Hosiery and Textile Mills and his father has 50% share in the partnership firm and the value is not properly stated by the first respondent/plaintiff in the plaint.

6.Since some of the properties are disputed and not amenable for partition and some of the properties are available for partition, a partial rejection of plaint is not permissible under law. Further, the plaint cannot be rejected on the basis of the allegations made by the petitioner/first defendant in his written statement or in an application for rejection of plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if that is so, when the plaint cannot be rejected by the Court exercising power under Order 7 Rule 11 CPC. Therefore, I find no infirmity or illegality in the impugned order and no merit in the civil revision petition.



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Consequently, the connected miscellaneous petition is closed.

Index : Yes/No
Internet : Yes/No
sms

23.01.2024

To
I Additional District and Session Court,
Tiruppur.



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V.SIVAGNANAM ,J.

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