



C.R.P.(MD)No.763 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 27.11.2024

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THE HONOURABLE MR.JUSTICE **N.SENTHILKUMAR**

C.R.P.(MD)(PD)No.763 of 2020
and
C.M.P.(MD)No.5105 of 2020

1.B.Mohamed Kalifullah
2.Mohamed Asik

... Petitioners

vs.

Arivin Nisha

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records relating to the fair and decreetal order dated 14.02.2020 made in I.A.No.107 of 2019 in O.S.No.185 of 2018 on the file of the Principal District Court, Dindigul and set aside the same by allowing this Civil Revision Petition.

For Petitioners : Mr.M.Sheik Abdullah
For Respondent : Mr.H.Lakshmi Shankar

ORDER

This Civil Revision Petition is filed against the order passed in I.A.No.107 of 2019 in O.S.No.185 of 2018 on the file of the Principal District Court,

Dindigul.

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2.The petitioners are the defendants in the suit filed for partition. The petitioners had filed application under Order VII Rule 11 of the Civil Procedure Code seeking to reject the plaint. The main contention placed by the petitioners/defendants is that there is no cause of action for filing the present suit and the suit is barred by limitation as it was instituted after a period of 29 years from the date of family arrangement. Further, the family arrangement deed, which was in favour of the petitioners and the suit in O.S.No.1878 of 1990 filed by the revision petitioners and pending before the District Munsif Court, Vendasandur are suppressed by the plaintiff. Without considering all these aspects, the trial Court has dismissed the petition filed by the revision petitioners.

3.The learned counsel for the respondent contends that all these factual aspects raised by the petitioners/defendants were found place in the written statement filed by them in the suit. Since it is a case of partition, the question of cause of action or limitation does not arise at all, which were intertwined not only on facts but also on the questions of law. As far as the family arrangement deed pleaded by the revision petitioners are concerned, it is the matter of fact to be dealt with before the trial Court by adducing sufficient evidences. Further with regard to the suit filed by the petitioners in O.S.No.1878 of 1990, which was originally pending before the Dindigul Court and subsequently, transferred to Vedsanthur, is concerned, it is also to be dealt only by the trial Court. When the

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disputed questions are raised by the revision petitioners for rejection of plaint, it should be considered only at the time of trial by cross examining the witnesses on the side of the plaintiff and by adducing proper evidences. Hence, he seeks to dismiss this petition.

4.Heard the learned counsel appearing on either side and perused the materials placed on record.

5.The revision petitioners /defendants in the suit filed an application Under Order VII Rule 11 CPC, to reject the plaint on specific grounds. When the defendants raised a plea that there is no cause of action to file the suit and it is barred by limitation, as rightly pointed by the respondent, these are the contentions on facts and law and that could be determined only before the trial Court by adducing evidences.

6.A suit for partition could be initiated by any of the interested party to the property in question at any time when the issue pops up in the mind of that party and the defendant in the suit cannot claim that such suit is barred by limitation. As rightly contended by the learned counsel for the plaintiff/respondent, the family arrangement deed and the suit in O.S.No.1870 of 1990, are the factual matters to be dealt with by the trial Court.



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7. Apart from these, the petitioners contend that the plaintiff in the suit has suppressed the fact that in an earlier occasion, the suit filed in O.S.No.334 of 2015 by the plaintiff for permanent injunction was dismissed on 21.03.2018. The trial court on considering the said submission, had recorded a specific finding that the suit in O.S.No.334 of 2015 was filed for permanent injunction, whereas the present suit is filed for partition. Since there is a clear distinction between permanent injunction and partition, the claim made by the petitioner/defendant cannot be sustained in the eye of law.

8. In view of the same, the order passed by the trial Court in I.A.No.107 of 2019 need not be interfered. Accordingly, this Civil Revision Petition is dismissed. As the suit is pending from the year 2018, the trial Court is directed to conclude the same within a period of one year from the date receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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Internet	:Yes/No
NCC	:Yes/No
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To

The Principal District Court, Dindigul



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N.SENTHILKUMAR, J.

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