



C.R.P.(MD)Nos.2526 and 3051 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.02.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)Nos.2526 and 3051 of 2023
and C.M.P.(MD).No.13108 of 2023

C.R.P.(MD).No.2526 of 2023

1.K.S.Ganapathy
2.Susila
3.Senthilkumar
4.Mayilvani

... Petitioners/Respondents/Plaintiffs

Vs.

1.K.Gangai Ammal
2.P.Vennila

... Respondents/Petitioners/Defendants 1 & 2

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 11.07.2023 passed in I.A.No.54 of 2020 in O.S.No.163 of 2019 on the file of IV Additional District Judge, Madurai.

For Petitioner : Mr.N.Vallinayagam

For Respondent : Mr.R.Suriyanarayanan



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C.R.P.(MD).No.3051 of 2023

1.K.Gangai Ammal
2.P.Vennila

... Petitioners/Petitioners/Defendants 1 & 2

Vs.

1.K.S.Ganapathy
2.Susila
3.Senthilkumar
4.Mayilvani

... Respondents/Respondents/Plaintiffs

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating with the Executable Order and fair order dated 11.07.2023 in I.A.No.54 of 2020 in O.S.No. 163 of 2019 on the file of the IV Additional District Judge, Madurai and set aside the same by rejecting the plaint in O.S.No.163 of 2019.

For Petitioner : Mr.R.Suriya Narayanan

For Respondent : Mr.N.Vallinayagam

COMMON ORDER

C.R.P.(MD).No.2526 of 2023 has been filed to set aside the order dated 11.07.2023 passed in I.A.No.54 of 2020 in O.S.No.163 of 2019 on the file of IV Additional District Judge, Madurai.

C.R.P.(MD).No.3051 of 2023 has been filed to set aside the Executable Order and fair order dated 11.07.2023 in I.A.No.54 of 2020 in O.S.No.163 of 2019 on the file of the IV Additional District Judge,



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Madurai, by rejecting the plaint in O.S.No.163 of 2019.

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2.The facts in brief:

Suit in O.S.No.63 of 2019 was filed by the revision petitioners in C.R.P.(MD).No.2526 of 2023 seeking the relief of declaration declaring that the decree and judgment dated 29.09.2008 made in O.S.No.29 of 2005 is null and void and for partition and claiming equity in respect of the portion of the suit property. It was filed in the year 2019. The defendant entered appearance and filed the written statement. Pending the trial process, a petition was taken out by the respondents who are the revision petitioners in C.R.P.(MD).No.3051 of 2023 under Order 7 Rule 11 of C.P.C. to reject the plaint with the following averments.

2.1.The first item of the suit property originally belonged to one Kuppusamy Moopanar. Kuppusamy Moopanar married twice. The first marriage was done with one Gangaammal. Through the first wife apart from the second defendant namely Vennila, one Asaithambi was born. Asaithambi died leaving behind the fifth defendant and his children defendants 6 and 8. Defendants 3 and 4 born through the second wife.



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All the properties were self acquired properties of Kuppusamy Moopanar. He died intestate on 17.01.2001.

2.2.Because of the difference of opinion between the children of two wives a suit in O.S.No.21 of 2005 was filed by them for partition. The purchasers were also added as defendants in O.S.No.29 of 2005. That suit was decreed on 29.09.2008 allotting 2/5 share in the first item. In the suit the first and second respondents filed their written statement stating that it is bad for partial partition. Against which K.S.Shanmugam filed appeal before the High Court in A.S.No.13 of 2009. The third item is not the property of Kuppusamy Moopanar. So third item is also not available for partition. In spite of pursue the matter further in O.S.No.29 of 2005, they filed the present suit for declaration. So there is no cause of action for the suit. It is clear abuse of process of the Court and it amounts to re-litigation.

3.That was resisted by the plaintiffs stating that in this suit they have sought partition in respect of the first item alone. In O.S.No.29 of 2005 the third item of the first property was not added. After collecting of those documents, now the present suit is filed in respect of the third



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item. Since they purchased the third item from one Anbuthambi and Chitturani, who are the legal heirs of Kuppusamy Moopanar. They rightly filed the suit.

4.At the conclusion of the enquiry process, the trial Court allowed the petition in part allowing in respect of the first prayer and dismissing the same in respect of the second prayer of partition.

5.Challenging the same both sides filed these revision petitions, one by the plaintiffs and another by the defendants.

6.At the time of hearing the matter, this Court pointed out that partial rejection of the plaint is not permissible under law. It is also accepted by both the sides counsel that only course available to this Court is to remand back the matter to the trial Court for fresh disposal in accordance with law.

7.Without going into the rival contentions and merits of the matter we can straight away refer in the Judgment of the Honourable Supreme



Court which recent in origin made in **C.A.No.7413 of 2023 (Kum. Geetha & Ors V. Nanjundaswamy & Ors)**. Para 11 & 12 requires reproduction.

“11. There is yet another reason why the judgment of the High Court is not sustainable. In an application under Order VII Rule 11, CPC a plaint cannot be rejected in part. This principle is well established and has been continuously followed since the 1936 decision in Maqsud Ahmad v. Mathra Datt & Co. This principle is also explained in a recent decision of this Court in Sejal Glass Ltd. v. Navilan Merchants (P) Ltd, which was again followed in Madhav Prasad Aggarwal v. Axis Bank Ltd. The relevant portion of Madhav Prasad (supra) is extracted hereinunder:

“10. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power under Order 7 Rule 11(d) CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same



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High Court. However, we find that the decision of this Court in Sejal Glass Ltd. [Sejal Glass Ltd. v. Navilan Merchants (P) Ltd., (2018) 11 SCC 780 : (2018) 5 SCC (Civ) 256] is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the Director's Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against Defendant 1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) CPC. The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) CPC will have no application at all, and the suit as a whole must then proceed to trial.

...

12. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) CPC on account of non-compliance with mandatory requirements or



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being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part...” (emphasis supplied)

12. In view of the above referred principle, we have no hesitation in holding that the High Court committed an error in rejecting the plaint in part with respect to Schedule-A property and permitting the Plaintiffs to prosecute the case only with respect to Schedule-B property. This approach while considering an application under Order VII Rule 11, CPC is impermissible. We, therefore, set aside the judgment and order of the High Court even on this ground.”

8.As observed earlier, right from the year 1936 partial rejection is not permissible under law. The mandate of law is not followed by the trial Court. Therefore, the matter is remitted back to the trial Court for fresh disposal in accordance with law and of course after affording opportunity to both sides to put forth their rival submissions. Let the above said matter be disposed of by the trial Court within a period of three months from the date of receipt of a copy of this order.



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9. With the above said directions, these civil revision petitions stand disposed of. No costs. Consequently, connected miscellaneous petition is closed.

12.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1. The IV Additional District Judge, Madurai.
2. The Section Officer,
E.R. Section/V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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