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C.R.P.(NPD) No.4946 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2025

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THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) No.4946 of 2024
and C.M.P.No.27842 of 2024

Minor M.Deenadayalan

... Revision Petitioner/Plaintiff

-VS-

1. V.Nagaraj

2. N.Meignanam

3. N.Jayalakshmi

... Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the impugned order dated 20.09.2024 in O.S.No.694 of 2021 passed by the Hon'ble III Additional District Judge, Coimbatore and restore the suit.

For Petitioner : Mr.M.S.Seshadri

For Respondents : Mr.G.R.Deepak

ORDER

Challenging the order dated 20.09.2024 of the Trial Court, rejecting the plaint on its own motion, the present revision petition has been filed.



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Facts of the case in nutshell:

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2. Originally, a suit in O.S.No.694 of 2021 had been filed, claiming partition of the suit property into 6 equal shares. The plaint proceeded on the basis that the suit property is the ancestral property of the minor plaintiff. The 1st defendant is the grandfather and the 2nd defendant is the father of the plaintiff and therefore, the plaintiff is entitled to half share in the father's 1/3rd share, i.e. 1/6th share as coparcener. When the suit was posted for framing issues, the Trial Court has rejected the suit in terms of the judgment of the Apex Court in the case of ***Uttam vs. Saubaug Singh, reported in CDJ 2016 SC 219***, treating the property in the hands of the 1st defendant as self acquired property after partition. Challenging the said order, this revision petition has been filed.

3. Learned counsel for the revision petitioner would mainly submit that the Trial Court has rejected the plaint, which is contrary to the provisions of law, by just relying upon the judgment of the Apex Court (supra), which has been diluted later by a Larger Bench of the Apex Court in ***Vineeta Sharma vs. Rakesh Sharma and Others, reported in (2020) 9***.



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SCC 1 and without taking note of the said judgment, the Trial Court has erroneously rejected the plaint at the threshold. Hence, this Court can very well interfere with the order by invoking Article 227 of the Constitution of India.

4. Whereas, learned counsel for the respondents contended that as against the rejection of the plaint, appeal alone is maintainable and no revision is maintainable, since the order of rejection is construed as a decree.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. This Court is conscious of the fact that as against the rejection of the plaint, only appeal will lie. Decree is defined under Section 2(2) of the CPC, which reads as follows:

“2(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be



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either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include -

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.”

Similarly, Order VII Rule 13 stipulates that the rejection of the plaint on any of the grounds mentioned in Order VII Rule 11 shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Though normally a rejection of the plaint is deemed to be a Decree and appeal alone will lie, the fact remains that in the case on hand, the suit has not been rejected on any of the grounds set out in Order VII Rule 11. A suit can be rejected on the following grounds:

“11. Rejection of plaint

The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-



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paper within a time to be fixed by the Court, fails to do so;
(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate; (f) where the plaintiff fails to comply with the provisions of rule 9;

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

7. The Trial Court has just relied upon the judgment of the Apex Court in **Uttam vs. Saubaug Singh, reported in CDJ 2016 SC 219.** and rejected the plaint holding that the property is a self acquired property of the 1st defendant. The aforesaid judgment has been diluted by a Larger Bench of the Apex Court in **Vineeta Sharma vs. Rakesh Sharma and Others** (supra), wherein, in Paragraph No.109, it has been held as follows:

“109. When the proviso to unamended Section 6 of the Act of 1956 came into operation and the share of the deceased coparcener was required to be ascertained, a deemed partition was assumed in the lifetime of the deceased immediately before his death. Such a concept of notional partition was employed so



as to give effect to Explanation to section 6. The fiction of notional partition was meant for an aforesaid specific purpose. It was not to bring about the real partition. Neither did it affect the severance of interest nor demarcated the interest of surviving coparceners or of the other family members, if any, entitled to a share in the event of partition but could not have claimed it. The entire partition of the coparcenary is not provided by deemed fiction; otherwise, coparcenary could not have continued which is by birth, and the death of one coparcener would have brought an end to it. Legal fiction is only for a purpose it serves, and it cannot be extended beyond what was held in *State of Travancore-Cochin & Ors. v. Shanmugha Vilas Cashew Nut Factory & Ors.*, (1954) SCR 53; *Bengal Immunity Co. Ltd. v. State of Bihar & Ors.*, AIR 1955 SC 661; and *Controller of Estate Duty v. Smt. S. Harish Chandra*, (1987) 167 ITR 230. A legal fiction created in law cannot be stretched beyond the purpose for which it has been created, as was held in *Mancheri Puthusseri Ahmed* (supra) thus:

“8. In the first place the section creates a legal fiction. Therefore, the express words of the section have to be given their full meaning and play in order to find out whether the legal fiction contemplated by this express provision of the statute has arisen or not in the facts of the case. Rule of



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construction of provisions creating legal fictions is well settled. In interpreting a provision creating a legal fiction the Court is to ascertain for what purpose the fiction is created, and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. But in so construing the fiction it is not to be extended beyond the purpose for which it is created, or beyond the language of the section by which it is created. It cannot also be extended by importing another fiction.”

8. In similar line, this Court, in the case of *Vasumathi and another vs. R.Vasudevan and others*, reported in *2024 SCC OnLine Mad. 6336* held that even after partition, the character of ancestral property continues. That being the position, this Court is of the view that the order passed by the Trial Court *suo motu* cannot be sustained in the eye of law. There is no quarrel that as against the rejection of plaint, appeal alone is maintainable, but, when the Trial Court passed an erroneous order without application of law, there is no bar for this Court to exercise the power under Article 227 of the Constitution of India to set right the mistake and interfere with



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N.SATHISH KUMAR,J.,
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the order, as the parties cannot be driven to cumbersome litigation in appeal. The order of the Trial Court is against the provisions of law and the rejection does not come within the ambit of Order VII Rule 11.

9. Accordingly, this Civil Revision Petition is allowed and the impugned order dated 20.09.2024 passed in O.S.No.694 of 2021 by the III Additional District Judge, Coimbatore is set aside. The Trial Court is directed to frame necessary issues based on the pleadings of the parties and dispose of the suit on its own merits within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

09.01.2025

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

The III Additional District Judge,
Coimbatore.

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