

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.2129 of 2011

&

M.P.No.1 of 2011

Jeyaraman

...Petitioner

VS.

1.Tamilaharai

2.Jambulingam

3.Sekar

4.Jeeva@Jeevanusha

5.Banupriya

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order passed by the II Additional District Munsif, Vriddhachalam dated 16.02.2010 in I.A.No.1782 of 2009 in O.S.No.403 of 2003.

For Petitioner : Mr.N.Karthikeyan

For Respondents : No appearance

ORDER

Though the respondents were served with notice long back on 15.12.2011, they have not chosen to enter appearance either in person or through counsel. Today also, they have not chosen to make

arrangement for representation on their behalf, though their names appear printed in the cause list. Hence, this Court decides to hear the arguments of the learned counsel for the petitioner on merits and decide the revision.

2. The arguments advanced by Mr.N.Karthikeyan, learned counsel representing the learned counsel on record for the petitioner are heard. The copy of the order challenged in the revision, grounds of revision and the other materials produced in the form of typed-set are also perused.

3. The Civil Revision Petition has been filed challenging the order of the trial Court dated 16.02.2010 made in I.A.No.1782 of 2009 in O.S.No.403 of 2003 on the file of the trial Court. The above said suit is one filed for the relief of partition and separate possession. As many as 5 persons, who are the respondents in the revision, joined together and filed the above said suit for partition.

4. Banupriya, the fifth respondent/fifth plaintiff was a minor at the time of filing of the suit. Hence, the suit was filed on her behalf also by the third respondent, Sekar as her next friend. During the pendency of the suit, she attained majority and she was declared major and consequently, the next friend was discharged. Thereafter, the fifth

respondent/fifth plaintiff took upon herself the job of conducting the case by engaging a lawyer, different from the advocate engaged by the other four respondents / plaintiffs. Even though the fifth respondent/fifth plaintiff would have chosen to engage an advocate different from the advocate engaged by the other four respondents/plaintiffs 1 to 4, there is no grievance aired by any of the plaintiffs that they do have conflict of interest and it would not be convenient for them to conduct the case as plaintiffs having two sets of advocates for two sets of plaintiffs. Even if there is such conflict of interest, it shall be the look out of the plaintiffs either to have some of the plaintiffs, who have conflicting interest, transposed as defendants. Absolutely, there is no locus standi for the defendants to contend that there is conflict of interest among the plaintiffs and hence, the suit against them is not maintainable.

5. Though it cannot be said that the defendants should not be allowed to take such a stand, the same cannot be a ground on which they can ask for the rejection of the plaint. Unless the defendants bring the case within the ambit of Order VII Rule 11 CPC, they cannot succeed in getting an order, rejecting the plaint. The conflict of interest among the plaintiffs perceived by the defendants is not a ground found in the said rule for rejection of plaint.

6. The learned trial Judge, on a proper understanding of the scope of Order VII Rule 11 CPC, passed the impugned order dismissing the application I.A.No.1782 of 2009 filed by the revision petitioner praying for the rejection of plaint.

7. The learned counsel for the revision petitioner made a meek attempt to impress the Court by contending that the prayer of the petitioners in the revision would fall under Order VII Rule 11 (f) of the Code of Civil Procedure. Order VII Rule 11 (f) says that the plaint shall be rejected where the plaintiff fails to comply with the provisions of Rule 9. Rule 9 states, where the court orders that the summons be served on the defendants in the manner provided in rule 9 of Order V, it will direct the plaintiff to present as many copies of the plaint on plain paper as there are defendants within seven days from the date of such order alongwith requisite fee for service of summons on the defendants.

8. It is not the case of the revision petitioners that the plaintiffs failed to produce required number of copies of plaint on plain paper to be served on the defendants along with the fee for service of such summon. In fact, Order VII Rule 9 r/w. Order VII Rule 11(f) cannot be invoked by the defendants, because it pertains to a stage prior to the service of summons on the defendants. Here is a case in which admittedly

summons were served on the defendants, who are eight in number and many of them have entered appearance and filed written statements. The revision petitioner, who figures as the first defendant, was also served with summons. If at all the plaintiffs fail to take summons for service on any one of the defendants, it may invite an order under Order IX Rule 5 CPC. Even such an order shall be the dismissal of the suit as against the defendants in respect of whom the batta was not presented. Viewed from any angle, the contention of the petitioner herein cannot be sustained and the same deserves to be rejected as untenable. There is no merit in the revision and the same deserves to be dismissed.

9. Accordingly, the revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

15.06.2015

Index: Yes
Internet: Yes
gpa

To

II Additional District Munsif
Vriddhachalam

P.R.SHIVAKUMAR.J.,

gpa

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