

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(PD).No.1795 of 2015
and M.P.No.1 of 2015

R.Suresh Kumar

... Petitioner

Vs.

M.F.Simon (deceased)
Fredric Gerson

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 05.08.2014 passed in I.A.No.4623 of 2012 in O.S.No.1540 of 1997 on the file of the III Assistant City Civil Court, Chennai, dismissing the application rejecting the plaint on an erroneous assumption and mistake of fact and law and for the argument to be advance at the time of admission.

For Petitioner : Mr.Irwin Aaron

For Respondent : Mr.N.Rajan

ORDER

Heard both sides.

2.Challenging the fair and final order passed in I.A.No.4623 of 2012 in O.S.No.1540 of 1997 on the file of the III Assistant Judge, City Civil Court, Chennai, the eighth defendant has filed the above Civil Revision Petition.

3.The plaintiffs filed the suit in O.S.No.1540 of 1997 for declaration and other reliefs. In the said suit, the eighth defendant filed an application in I.A.No.4623 of 2012 under Order 7 Rule 11 of the Code of Civil Procedure to reject the plaint. The said application was filed in the year 2012. The petitioner contended that the first plaintiff, with his wife and children, particularly, the second plaintiff is serving for the cause of orphanage children. Therefore, the family members of the first plaintiff are taking active part in the welfare of orphan children and the welfare they could sue for the right to administer the orphanage even after the death of first plaintiff. The petitioner contended that the second prayer in the suit is inter linked with the first prayer and therefore, on the death of the first plaintiff, the second plaintiff cannot continue the suit. The application to reject the plaint was filed after a lapse of 15 years. Even according to the petitioner, the first plaintiff had died in the year 2007 and the petitioner waited for five years after the death of the first plaintiff to file an application under Order 7 Rule 11 of the Code of Civil Procedure. Since the petition was filed at a belated stage (i.e.) after 15 years, the same cannot be entertained. The trial Court, taking into consideration the case of both the parties, rightly dismissed the application.

4. In these circumstances, I do not find any error or irregularity in the order passed by the trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed.

5. The learned counsel for the petitioner submitted that the eighth defendant may be permitted to file additional written statement raising the contention raised in the application filed under Order 7 Rule 11 of the Code of Civil Procedure.

6. Mr. N. Rajan, the learned counsel appearing for the respondent has no objection for giving such liberty to the eighth defendant to file additional written statement.

7. Further, the learned counsel on either side represented that the trial Court may be directed to dispose of the suit along with all the pending applications within a stipulated time.

8. Having regard to the submissions made by the learned counsel on either side, I permit the eighth defendant to file additional written statement raising the contentions raised in I.A.No.4623 of 2012 on or before 15.06.2015. The plaintiff is at liberty to file reply statement on or before

30.06.2015. The III Assistant Judge, City Civil Court, Chennai is directed to dispose of the suit in O.S.No.1540 of 1997 along with all the pending applications on or before 30.11.2015, on merits and in accordance with law, uninfluenced by any of the observations given in the application in I.A.No.4623 of 2012. The trial Court shall also frame additional issues based on the additional written statement and the reply statement to be filed by the parties, if necessary.

9. With this observation, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
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28.04.2015

Note: Issue order copy on 30.04.2015.

To

1. The III Assistant Judge,
City Civil Court,
Chennai.

M.DURAIWAMY,J.
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