

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-09-2015

CORAM

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

C.R.P. (PD) No.3561 of 2015

And

M.P.No.1 of 2015

D.Nedunchezian

.. Petitioner

Vs.

1.R.Radha Ammal

2.S.Vanaja

D.Elangovan (Deceased)

3.M.Sarojini

4.M.Elango @ Dhanalakshmi Ammal

5.G.Mala

6.A.Baby @ Varalakshmi

7.The Secretary,
Regional Transport Authority,
Salamedu,
Villupuram.

8.The Deputy Transport Commissioner,
Subramaniyapuram,
Salem.

9.The Collector of Villupuram,
Villupuram,
Villupuram District.

10.V.Pandurangan

11.D.Sateesh Kumar

12.D.Rajkumar

13.D.Dinesh Kumar

14.B.Gowri

15.R.Kannusamy

16.S.P.Raja

17.Chinnapillai Ammal

18.E.Usha

.. Respondents

Civil Revision Petition is preferred under Article 227 of the Constitution of India against the fair and decretal order dated 20.7.2015 and made in I.A.No.544 of 2012 in O.S.No.87 of 2004 on the file of the Principal District Court, Villupuram.

For Petitioner

: Mr.T.Mohan
for Mr.K.Chandrasekaran.

ORDER

The revision petitioner is the second defendant in O.S.No.103 of 1996 on the file of the learned Sub-Judge, Villupuram. Later the said suit got transferred to the file of the learned Principal District Judge, Villupuram and re-numbered as O.S.No.87 of 2004. It is a partition suit.

2. The first respondent herein is the plaintiff.

3. The first respondent and the second defendant are brother and sister and they are the children of one Dhanakoti Mudaliar who had six daughters and two sons. The plaintiff is one of the daughters and she filed the said partition suit claiming the properties of her father.

4. As stated above, the suit was laid in 1996. While-so, the second defendant filed I.A.No.544 of 2012 in O.S.No.87 of 2004 after 16 years to reject the plaint under Order VII, Rule 11 CPC.

5. Two grounds were raised by the revision petitioner. One of the ground raised in that application is that the plaint does not disclose any cause of action. The second ground is that there is no proper valuation of the plaint.

6. After hearing both sides, the Trial Court rejected the application in I.A.No.544 of 2012 in O.S.No.87 of 2004 on 20.7.2015. As against the same, the revision petitioner filed this revision.

7. Heard Mr.T.Mohan, learned counsel appearing for the revision petitioner.

8. The learned counsel for the revision petitioner/second defendant has vehemently contended that the plaint does not disclose any cause of action.

9. As far as this issue is concerned, the Trial Court has categorically held that the same could be decided only at the time of trial by letting in oral evidence. The Trial Court also opined that the plaint discloses cause of action for filing the suit. It is useful to extract paragraph-10 of the order dated 20.7.2015 made in I.A.No.544 of 2012 in O.S.No.87 of 2004 passed by the learned Principal District Judge, Villupuram, as under:-

"10. On considering the submissions and counter submission and on perusal of records, it is seen that the cause of action for filing this suit which can be decided only at the time of trial by letting in oral evidence and the plaint discloses the cause of action for filing this suit and the cause of action alleged is whether false or true cannot be decided at this stage. Further, the

question whether the plaintiff has any cause of action or not is to be determined on the basis of materials which may be produced by the parties at appropriate stage in the suit and the plaint averments amounts to sufficient compliance with the requirement of the law."

10. I do not find any infirmity in the aforesaid findings of the Trial Court.

11. The next ground urged by the learned counsel for the revision petitioner is that there was improper valuation of the plaint and the payment of insufficient court fees and hence the plaint has to be rejected.

12. According to the learned counsel for the revision petitioner, the plaintiff filed the suit for partition and separate possession and hence she should have paid the Court Fee for 1/8th of the total market value of all the suit schedule mentioned properties. The same was rejected by the Trial Court holding that the plaintiff is deemed to be in joint possession of the suit properties.

13. Further, the Trial Court held that the issue

relating to valuation of the plaint and the jurisdiction of the suit could be made as specific issues and those issues would be decided by the Trial Court. It is useful to extract paragraph 13 of the said order as under:-

"13. On considering the submissions and counter submission and on perusal of records, it is seen that it is a settled law that unless the right of the plaintiff to inherit the property is denied, the plaintiff is deemed to be in joint possession of the properties. Moreover, the issues relating to valuation of the suit and the jurisdiction of the suit could be raised as specific issues and they could be decided by the Court concerned during the trial and the suit has been filed in the year 1996 and the written statement has also been filed long ago and in the written statement did not find any of the allegations as found in the petition under Order VII, Rule 11 CPC and even though it has been held in 2012 (4) CTC 308, the petition can be filed at any stage, the same shall not be filed with a design to prolong the matter and especially after the side of the plaintiff is over."

14. Recording the aforesaid reasons, the Trial

Court rejected the application. The Trial Court also took note of the fact that the suit was filed in the year 1996 and the plaintiff has also been examined and Exs.A-1 to A-7 were marked and the matter was posted for cross-examination for several hearings. Ultimately, PW-1 was cross-examined by the defendants.

15. At this juncture, taking note of all these facts, the Trial Court rejected the application and I do not find any infirmity with the impugned order of the Trial Court and accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Index : Yes.
Internet : Yes.
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01-09-2015

To

The Principal District Court,
Villupuram.

D.HARIPARANTHAMAN, J.

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