

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 23.09.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE M. VENUGOPAL

OSA No.196 of 2015
and M.P.No.1 of 2015

Ashwath Ramji
Flat No.42, I Floor,
93, Sathyanarayana Apts.,
Poes Gardens,
Chennai-600 086.
(Amendment carried out as per
Original App.No.6446 of 2010
in order dated 23.11.2010 and
time extended dated 19.04.2011
in App No.2160 of 2011)

.. Appellant

Vs.

1.N.Ramji
2.Aishwarya Ramji

.. Respondents

Prayer: Appeal filed under Order XXXVI Rule 1 read with Clause 15 of the Amended Letters Patent of 1865, to set aside the fair and final order dated 28.08.2015 in CS No.412 of 2008 on the file of the Learned Single Judge.

For Appellant : Mr.V.P.Raman

For Respondents : Mrs.Geetha Ramaseshan for R1
Mr.Sharath Chandran for R2

JUDGMENT

M. VENUGOPAL, J.

The Appellant/Plaintiff has preferred the instant Original Side Appeal as against the order dated 28.08.2015 in C.S.No.412 of 2008 passed by the Learned Single Judge.

2.The Learned Single Judge, while passing the impugned order on 28.08.2015 in C.S.No.412 of 2008 (filed by the Appellant/Plaintiff) has passed the following orders:

"That the Registry is and is hereby directed to send back the bundle to the Learned Additional Master IV for recording evidence.

2.That the Learned Additional Master IV be and is hereby directed to complete the evidence, within period of six weeks.

3.That both parties hereto be and are hereby directed to co-operate with the Master for recording evidence.

4.That the Learned Additional Master IV be and is hereby directed to send a report regarding the co-operation in examining the witnesses."

3.The Learned Counsel for the Appellant/Plaintiff contends that the impugned order passed by the Learned Single Judge, dated 28.08.2015 in C.S.No.412 of 2008, in directing the Registry to send back the bundle to the Learned Additional Master-IV, for recording evidence and a further direction issued to the effect that the Learned Additional Master-IV is directed to complete the evidence within a period of six weeks, etc., are totally, unwarranted, and unsustainable in the eye of Law, because of the reasons that (1)an application to reject the Plaint A.No.5141 of 2015 filed by the 1st Respondent/1st Defendant and (2)A.3895 of 2015 filed by the Appellant/Plaintiff are pending before the Learned Single Judge for adjudication on merits.

4.The pith and substance of the contention on the side of Appellant/Plaintiff is that when two applications A.Nos.5141 and 3895 of 2015 filed by the concerned parties are pending on the file of the Learned Single Judge in C.S.No.412 of 2008, it is inappropriate on the part of the Learned Single Judge to issue necessary directions to the Learned Additional Master-IV, to complete the evidence within a period of six weeks and a further direction issued to both the parties to co-operate with the Learned Additional Master-IV for recording evidence, are nothing but a futile exercise in vain, considering the facts and circumstances of the present case, which float on the surface.

5.It is to be noted that a duty is showered upon a Court of Law to perform its obligation in rejecting the Plaint hit by any of the infirmities under Cls.(a) to (d) of Or.7 R.11 of the Code of Civil Procedure. It is to be remembered that the ingredients of Or.7 R.10 of the Code of Civil Procedure are undoubtedly a tool, in the hands of the Court of Law to achieve the object behind Or.7 R.11 of the Code of Civil Procedure. No wonder, the powers under Or.7 R.11 of the Code of Civil Procedure for rejection of Plaint are to be exercised by a Court of Law with utmost care and caution.

6.On a careful consideration of the contentions advanced on behalf of the Appellant/Plaintiff, this Court is of the considered view that the Orders dated 28.08.2015 in C.S.No.412 of 2008 passed by the Learned Single Judge in directing the Registry to send back the

bundle to the Learned Additional Master-IV, for recording evidence and the issuance of further directions to the Learned Additional Master-IV, to complete the evidence within a period of six weeks, etc., are not per se valid, legal in the eye of Law, when the applications namely, A.Nos.5141 and 3895 of 2015 are admittedly pending, of course, for adjudication on merits.

7.In view of the foregoing, this Court is perforced to interfere with the said Order dated 28.08.2015 in C.S.No.412 of 2008 passed by the Learned Single Judge to prevent an aberration of Justice and to promote substantial cause of Justice and accordingly, sets aside the same.

Resultantly, O.S.A.No.196 of 2015 is allowed, leaving the parties to bear their own costs. Liberty is granted to the respective parties to make a mention before the Learned Single Judge for early taking up of A.Nos.5141 and 3895 of 2015, if they so desire/advised. Connected M.P.No.1 of 2015 is closed.

-Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

mps

To

1. The Sub Assistant Registrar,
Orginal side,
High court,
Madras.

+1cc to Mr.Geetha Ramaseshan,Advocate(sr.52247)

+1 cc to Mr.V.P.Raman,Advocate(sr.52022)

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