

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.4318 of 2011
and
M.P.Nos.1/2011 and 1/2014

Vasanthamani

... Petitioner

vs.

1.Alagirisamy Naidu
2.N.R.Soundararajan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order of the III Additional District Munsif, Coimbatore dated 25.08.2011 made in I.A.No.459 of 2007 in O.S.No.3398 of 1996.

For Petitioner : Mr.M.S.Krishnan, Sr.Counsel
for M/s.Sarvabhauman Associates

For Respondents : Mr.T.V.Ramanujan, Sr.Counsel
for Mr.C.Jagadish for R1
Mr.S.Subbiah for R2

ORDER

The first defendant in the original suit O.S.No.3398/1996 pending on the file of the III Additional District Munsif, Coimbatore is the petitioner in the Civil Revision Petition. The first respondent A.Alagirisamy Naidu is none other than the sole plaintiff in the above said original suit. The suit came to be filed for the relief of partition and separate possession. Nearly after 11 years, the revision petitioner, who is the first defendant in

the above suit, chose to file an application in I.A.No.459 of 2007 under Order VII Rule 11 CPC praying for the rejection of the plaint filed in the above said suit O.S.No.3398/1996. In the said application, the revision petitioner/first defendant made A.Alagirisamy Naidu, the plaintiff alone as the sole respondent. After contest, the learned trial judge, by an order dated 25.08.2011, which is impugned in this civil revision petition, dismissed the said petition holding that the plaint could not be rejected under Order VII Rule 11 CPC. While discussing the merits of the petition, the learned trial judge went into the question whether the suit was barred either under Order II Rule 2 or under Section 11 of the CPC and provided an answer to the effect that the suit was not barred by either of those provisions. Aggrieved by the same and questioning the legality of the said order, the first defendant has preferred the civil revision petition.

2. One N.R.Soundararajan, who figures as the 4th defendant in the above said suit has chosen to file M.P.No.1/2014 for getting impleaded as a party respondent in the civil revision petition. The said petition came to be filed on the premise that the suit being one for partition, even the defendants, whose right to share, are admitted or who makes a claim to a share, shall be in a way deemed to be a plaintiff and he can, at any point of time, during the pendency of the case, seek division of his share and allotment of his share to him by paying the necessary court fee. Though the first defendant chose to file the petition under Order VII Rule 11 CPC making the plaintiff alone as a party respondent, now because of the stand

taken by Mr.N.R.Soundararajan, the 4th defendant in the original suit, the revision petitioner as well as the first respondent in the revision petition (plaintiff in the original suit) express no objection for allowing the petition filed by the 4th defendant for his impleadment as a party respondent in the civil revision petition. Hence M.P.No.1/2014 is allowed and the petitioner therein, namely Mr.N.R.Soundararajan (4th defendant) in the original suit, is added as a party respondent and ranked as second respondent in the civil revision petition.

3. The arguments advanced by Mr.M.S.Krishnan, learned senior counsel appearing for M/s.Sarvabhauman Associates, counsel on record for the petitioner, by Mr.T.V.Ramanujan, learned senior counsel appearing for Mr.C.Jagadish, counsel on record for the first respondent and by Mr.S.Subbiah, learned counsel for the second respondent (impleaded by virtue of order dated 03.02.2016 in M.P.No.1/2014) are heard. The grounds of revision and all other materials produced in the form of typed sets of papers are also perused.

4. Mr.M.S.Krishnan, learned senior counsel for the petitioner argued that the suit itself, being an attempted re-litigation, is an abuse of process of court and on that ground alone the plaint in the suit was sought to be rejected by filing necessary application under Order VII Rule 11 CPC; that the learned trial judge, without properly appreciating the points raised by the revision petitioner before the trial court in the application under

Order VII Rule 11 CPC, dismissed the same by the impugned order and that the said order of the learned trial judge cannot be legally sustained and on the other hand, it deserves to be set aside by exercise of the power of superintendence of this court over the subordinate courts under Article 227 of the Constitution of India.

5. Per contra, Mr.T.V.Ramanujan, learned senior counsel for the first respondent, who is also supported by Mr.S.Subbiah, learned counsel for the second respondent, submits that the prayer for rejection of the plaint came to be made on the following three grounds:

i) The suit being barred by Order II Rule 2 CPC in view of the dismissal of the earlier suit filed by the very same plaintiff for the very same relief.

i) The suit being barred by *res judicata* as the issue involved in the case was finally decided in yet another suit which resulted in a compromise decree; and

ii) The suit is an abuse of process of court (not specifically raised in the affidavit filed in support of the application under Order VII Rule 11 CPC).

6. According to the submissions of the learned senior counsel for the first respondent, no straight jacket answers could be provided to all the above three issues because of the complicity in the case, namely compromise having been effected only among a few of the parties in the earlier suit and the compromise decree not dealing with specifically the rights of the other parties, who did not join in the compromise. The second

suit for partition after the dismissal of the earlier suit for partition is claimed to be filed based on a fresh cause of action on the premise that the cause of action for partition is a continuing cause of action and that the question of *res judicata* shall not be a ground for rejection of the plaint and on the other hand, it has got to be raised as a plea of defence and decided in the suit.

7. In the light of the above said submissions made by the learned senior counsel for the respondent No.1, learned senior counsel for the revision petitioner submits that since the learned trial judge seems to have given findings on those issues in the order passed in the application filed under Order VII Rule 11 CPC; that same shall be projected as a bar for raising such a plea even in the suit and that therefore, the order of the trial court dismissing Order VII Rule 11 CPC petition may be confirmed and at the same time the findings on the above said issues shall be set aside or expunged leaving the said questions open to be decided in the suit.

8. The learned senior counsel for the first respondent and the counsel for the second respondent also agree that the decretal order dismissing Order VII Rule 11 CPC application can be confirmed on the ground that the points raised are the points to be raised as pleas of defence in the suit itself and such issues are to be left open to be canvassed by both the parties in the suit.

9. The above said submissions made on both sides are recorded.

Accordingly, the civil revision petition is dismissed and the order of the trial court dated 25.08.2011 dismissing I.A.No.459/2007 in O.S.No.3398/1996 is confirmed with a rider that nothing found in the body of the order shall deter or influence the trial court from making a decision on the issues indicated supra on their own merits in the suit. It is made clear that the order of this court in this civil revision petition will not prevent the revision petitioner from raising pleas of defence available to the revision petitioner in the suit. In view of the long pendency of the case, this court directs the trial court to dispose of the suit at an early date not later than six months from the date of receipt of a copy of this order. However, there shall be no order as to cost. Consequently, M.P.No.1 of 2011 is closed.

03.02.2016

Index : Yes
Internet : Yes
asr

To
The III Additional District Munsif, Coimbatore

Note to Office:

Issue order copy on
05.02.2016

P.R.SHIVAKUMAR, J.

asr/-

C.R.P (PD) No.4318 of 2011

and

M.P.No1. of 2011 & 1/2014

03.02.2016