

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.4201 of 2015

& M.P.No.1 of 2015

1.M.O.H.Iqbal
2.H.Najumnunissa
3.Shakeela
4.Faisal

...Petitioners/Defendants

vs.

M.O.H.Asalam

... Respondent/Plaintiff

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 12.09.2015 made in I.A.No.951 of 2014 in I.A.No.737 of 2001 in O.S.No.207 of 1978 on the file of Principal Sub Judge, Puducherry.

For Petitioner : Mr.G.R.Swaminathan
for Mr.R.Thiagarajan

For Respondent : Mrs. Chitra Sampath,
Senior Counsel for
M/s. T.S.Baskaran

ORDER

This Civil Revision Petition has been filed under Article 227 of the Constitution of India challenging the order of the Trial Court dated 12.09.2015, made in I.A.No.951 of 2014 in O.S.No.207 of 1987. The above said suit was one for dissolution of partnership firm and rendition of accounts. A preliminary decree came to be passed on 26.04.1999. In fact, suit was dismissed by the Trial Court and on appeal, the Appellate Court (High Court) allowed the same and granted a preliminary decree, dissolving the firm and directing the defendants to render account. By the said decree, the Trial Court was also directed to appoint a receiver to take charge of the firm with all its assets and liabilities, till the entire proceedings of winding up of the firm would be completed.

2. As against the preliminary decree passed by this Court, by its judgment and decree dated 26.04.1999, an Appeal in LPA was filed and the same was dismissed and the SLP filed before the Supreme Court also came to be dismissed. Thereafter, final decree proceedings were initiated in I.A.No.737 of 2001. An order came to be passed in the said application on 03.03.2003 by the Trial Court appointing an Advocate Commissioner to scrutinize the accounts of the firm, from

01.07.1973 till the date of the said order. Meanwhile, an application in I.A.No.736 of 2001, was filed by the plaintiff praying for permission to amend the plaint schedule, to include more properties. The said application was allowed by the Trial Court, by order dated 15.07.2013. As against the said order, the defendants preferred a revision in C.R.P.No.3685 of 2013. This Court by order dated 06.02.2014, allowed the CRP and set aside the order of the Trial Court dated 15.07.2013 made in I.A.No.736 of 2001. The said application, as per the order of this Court was dismissed, without prejudice to the rights of the plaintiff to contend in the final decree proceedings that the properties sought to be included by way of amendment are any other property is, also the properties/property of the partnership firm, which is the subject matter of the suit in which, preliminary decree for dissolution and rendition of accounts has been passed.

3. After the said order passed by this Court, when the matter is pending for further hearing in the final decree application, the plaintiff filed application No.951 of 2014 under Order 7 Rule 14(iii) read with Section 151 of CPC, for the reception of 50 documents to be used as evidence on the side of the plaintiff. The said application was resisted by the defendants contending that what the plaintiff could not achieve

in the amendment application was sought to be achieved by filing the said petition. The learned Trial Judge, after hearing both sides discountenanced the objections raised by the defendants and allowed the application holding that the reception of the documents condoning the delay in producing them shall have nothing to do with the admission of the documents as a piece of evidence which shall be done on the basis of the establishment, proof and relevancy of the documents. It is as against the said order, the present CRP has been filed.

4.The arguments advanced by Mr.G.R.Swaminathan, learned counsel appearing on behalf of Mr.R.Thiagarajan, learned counsel for the revision petitioners and by Mrs.Chitra Sampath, learned Senior Counsel arguing on behalf of the Mr.T.S.Baskaran, learned counsel on record for the respondent are heard. The copy of the impugned order and other documents produced in the form of typed sets of papers are also perused.

5. The question that arises for consideration in this revision is very simple. After passing of a preliminary decree for dissolution of the firm and for rendition of accounts, a final decree application filed

by the plaintiff is pending. In the final decree application, an Advocate Commissioner was appointed to take accounts of the partnership firm. Then an application in I.A.No.738 of 2001 was filed by the plaintiff for appointment of a receiver in terms of the preliminary decree. The said application was allowed, but no receiver was named by the Court. Thereafter, the plaintiff filed an application in I.A.No.1446 of 2005 to appoint himself as the receiver. The same was allowed and the said order is under challenge before the District Court in an appeal. Under the said circumstances alone, the present petition in I.A.No.951 of 2014 came to be filed.

6.The only objection raised by the defendants is that by producing these documents, the plaintiff makes an attempt to alter the plaint schedule, which attempt proved to be unsuccessful on an earlier occasion. This Court is not in a position to accept the said contention raised on behalf of the defendants/revision petitioners. No attempt is made to amend the schedule of the plaint and in fact, in view of the order dated 06.02.2014 made in CRP No.3685 of 2013, the said amendment is also not possible. The plaintiff does, have every right to show that the funds of the partnership firm before completely settling accounts, were utilized by the defendants for acquisition of some other

properties and that those properties should also be treated as accruals to the partnership properties. Only in order to show that certain acquisitions were made using the partnership funds, the petitioners want to produce the documents mentioned in the list of annexure to I.A.No.951 of 2014.

7. Of course, those documents came into existence after the exercise of the plaintiff's right to seek dissolution of the partnership. But till date, the accounts have not been settled and no amount has been paid to the plaintiff, as the share of the plaintiff in the partnership firm and no amount has been claimed from the plaintiff as his share in the loss, if any, in the partnership business. As such, the plaintiff cannot be shown the door by dismissing the petition seeking production of the documents relating to properties which the plaintiff wants to prove to be properties acquired with the funds of the partnership firm. Mere reception of the documents after condoning the delay in filing those documents will not mean the admission of those documents in evidence. What the Trial Court has done is to condone the delay and permit the plaintiff to produce those documents. But the relevancy of those documents and proof of the contentions of the plaintiff regarding the series of those acquisitions are relegated to be

decided in the enquiry in the final decree application. As the defendants have not rendered accounts so far, and since the accounts have not been settled for several decades, the plaintiff cannot be prevented from producing the above said documents in his attempt to prove that the acquisitions made therein were made out of the partnership funds. This Court does not find any defect or infirmity in the order passed by the Trial Court. There is no merit in the revision and the revision deserves dismissal.

8. Accordingly, the revision is dismissed. Further, it is clarified that while dealing with the final decree application, the Trial Court should not be influenced by any of the observations of this Court made in this order or the observations made by the Trial Court in the impugned order. Consequently, connected miscellaneous petition is closed.

02.03.2016

Index: Yes/No
Internet: yes/No
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To

1. The Principal Sub Judge, Puducherry.

P.R.SHIVAKUMAR. J.,

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