

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.(PD) No.4698 of 2015

Arul Narayanan

.. Petitioner

Vs.

1. Poongothai
2. Animamalar

... Respondents

Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order dated 20.07.2015 passed in Memo in O.S.No.238 of 2010 by the Additional District Munsif Court, Kancheepuram and to direct the Lower Court to transfer the said suit to the District Court No.II, Kancheepuram.

For Petitioner : Mr.V.K.R.Balakrishnan

For Respondents : No representation

ORDER

Praying to set aside the order dated 20.07.2015 passed in Memo in O.S.No.238 of 2010 by the Additional District Munsif Court, Kancheepuram and for a direction to the Trial Court to transfer the said suit to the District Court No.II, Kancheepuram, the petitioner has come up with the present Civil Revision Petition.

2. Heard the learned counsel for the petitioner.

3. The petitioner, who is the first defendant in the suit, would submit that the 1st respondent herein filed a suit for partition and separate possession in O.S.No.238 of 2010. The petitioner/1st defendant filed a Memo before the Additional District Munsif Court, Kancheepuram stating that as the valuation of the suit exceeds Rs.10 lakhs, the Court below has no pecuniary jurisdiction to entertain the suit and hence, prayed for transfer of the suit to District Court-II, Kancheepuram. Pursuant thereto, the 1st respondent/plaintiff filed a detailed Memo of Objection before the Court below. After hearing both sides, the Trial Court rejected the Memo filed by the petitioner/1st defendant. Aggrieved by the same, the petitioner/1st defendant has filed the present Civil Revision Petition.

4. It is represented that the suit in O.S.No.238 of 2010 is a suit for partition filed by one Poongothai against her brother and sister. Originally, the suit property belonged to one T.V.Ethiraj Pillai, who purchased the same under a Registered Sale Deed dated 22.12.1961. He died intestate on 16.02.2006 leaving behind his

wife, Kamalammal and the petitioner and the respondents as his legal heirs. The said Kamalammal died intestate on 24.12.2009. Hence, the 1st respondent/plaintiff claimed one-third share in the suit property by filing a suit. The petitioner/1st defendant filed written statement and is contesting the suit. It is his claim that it is he who took care of his parents and his sister, the 2nd respondent herein, who is deserted by her husband and hence, prayed for dismissal of the suit. Taking into account the Memo filed by the petitioner/1st defendant and the detailed objection filed by the 1st respondent/plaintiff, the Memo filed by the petitioner/1st defendant came to be dismissed.

5. The suit is of the year 2010. But, the petitioner/1st defendant filed a Memo to transfer the suit in the year 2015 on the ground that the subject matter of the suit has not been properly valued and that the Trial Court has no pecuniary jurisdiction to try the suit. It is settled law that when the subject matter of the suit is not properly valued and court fee paid is not sufficient, an application under Section 12(2) of the Tamil Nadu Court Fees and Valuation Act has to be filed and if the Court comes to the conclusion that the subject matter of the suit has not been properly

valued or that the fee paid is not sufficient, the court shall fix a date before which the plaint shall be amended in accordance with the court's decision and the deficit fee shall be paid. Any objection regarding the value of the property and the court fee has to be raised before recording the evidence. Once the trial has started, the question regarding the jurisdiction of the Court cannot arise.

6. In the case on hand, the petitioner/1st defendant has filed a Memo questioning the payment of insufficient court fee and the jurisdiction of the Court, after examination of witnesses. By the time he filed the Memo, P.W.1 was examined in chief and the case was ready for cross-examination of P.W.1. Also, Exs.A1 to A6 were marked. Hence, the Trial Court rejected the Memo filed by the petitioner/1st respondent on the ground that the objections are raised in a belated stage. The petitioner has filed the Memo to transfer the suit, in the year 2015, which is five years after the initiation of the suit. Such act of the petitioner is only with a view to drag on the proceedings, thereby denying lawful share to his siblings. It is pertinent to note that the Trial Court has decided the matter on merits after considering all the aspects in a proper perspective.

7. In such circumstances, I do not find any reason to interfere with the view taken by the Trial Court. **Accordingly, this Civil Revision Petition is dismissed, however, with costs. The petitioner herein is directed to deposit a sum of Rs.5,000/- (Rupees Five Thousand only) to the Tamil Nadu Chief Minister Flood Relief Fund within a period of two (2) weeks from the date of receipt of a copy of this order.**

No costs.

20.01.2016

aeb

Index : Yes/No
Internet : Yes/No
To :

The Additional District Munsif Court, Kancheepuram.

R.MALA,J.

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