

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.179 of 2016

and

C.M.P.No.914 of 2016

and

Caveat No.4851 of 2015

1.Porkalai
2.Pazhaniammal
3.Jeyasundari
4.Anjalatchi

... Petitioners

vs.

Janakiraman

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order of the Principal District Munsif, Cuddalore dated 09.09.2015 made in I.A.No.294/2015 in O.S.No.756 of 2014.

For Petitioners : Mr.P.Mani

For Respondent : Mr.T.Velumani

ORDER

The defendants in the original suit O.S.No.756/2004 on the file of the Principal District Munsif, Cuddalore are the petitioners in this revision. The suit was originally filed for declaration and permanent injunction and subsequently by way of an amendment a prayer for recovery of possession was also added. After trial, the trial court passed a decree granting the

relief of declaration and recovery of possession by its judgment and decree dated 27.07.2013. The said decree of the trial court was challenged before the Court of the Principal Subordinate Judge in A.S.No.48/2013. The learned Principal Subordinate Judge, Cuddalore, by judgment and decree dated 28.08.2014, set aside the decree of the trial court dated 29.07.2013 and remitted the suit back to the trial court for fresh disposal, after giving an opportunity to the plaintiff to amend the plaint making necessary plea in support of the prayer for recovery of possession.

2. The remand order came to be passed on the ground that the prayer for recovery of possession was not supported by any plea in the plaint. Under the said circumstances alone, the learned Principal Subordinate Judge, Cuddalore (lower appellate court) chose to set aside the decree passed by the trial court and remand the suit to the trial court, giving an opportunity to the plaintiff to file a petition to amend the plaint so as to incorporate the supporting plea for the prayer for recovery of possession.

3. The remand order dated 28.08.2014 passed by the lower appellate court has been challenged by the revision petitioners herein in C.M.A.No.322/2015 before this court and the same is pending on the file of this court. Since no stay of further proceedings pursuant to the order of remand was granted by this court in the above said Civil Miscellaneous Appeal, the learned trial judge proceeded with the hearing of the application filed by the respondent herein (plaintiff) in I.A.No.294/2015 in

O.S.No.756/2004 for amendment. The said petition was allowed by an order dated 09.09.2015. Challenging the said order, the present civil revision petition has been filed by the petitioners herein (defendants).

4. The respondent herein (plaintiff) has entered a caveat and he is represented by Mr.T.Velumani, Advocate. Learned counsel for the respondent (caveator) submits that since no stay was granted by the High Court in the Civil Miscellaneous Appeal preferred against the order of remand, the trial court cannot be stated to have either acted without jurisdiction or exceeded its jurisdiction in entertaining the application for amendment and allowing it.

5. On the other hand, Mr.P.Mani, learned counsel for the petitioners would submit that though the remand order has been challenged in C.M.A.No.322/2015, if the order in the amendment application is not challenged, there is the danger of the respondent claiming that the appeal against the order of remand itself has become infructuous, as the purpose of remand has been accomplished by the trial court.

6. The submissions made on both sides are taken into consideration.

7. The mere fact that no order of stay of further proceedings in the suit pursuant to the order of remand made by the appellate court has been granted by this court in C.M.A.No.322/2015 preferred against the

order of remand, will not make the appeal itself fructuous. The further proceedings in the trial court shall always be subject to the result of the Civil Miscellaneous Appeal preferred against the order of remand. If the order of remand itself is set aside, then the consequential orders passed by the trial court including the order impugned in this revision will be not better than a still born baby. Suppose this court sets aside the order of the trial court in the amendment application, may be, temporarily till disposal of the Civil Miscellaneous Appeal and if ultimately the Civil Miscellaneous Appeal is dismissed, then the very same exercise has got to be carried out once again and it will cost the consumption of double the time. Hence the prudent course to be adopted by this court is to dismiss the civil revision petition, with an observation that the petitioner can canvas the same point before the High Court in the Civil Miscellaneous Appeal filed against the order of remand and that this order of dismissal shall not come in the way of putting forth such an argument in the civil miscellaneous appeal.

Accordingly, the civil revision petition is dismissed with the above observation. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

01.02.2016

Index : Yes/No
Internet : Yes/No
asr

To
The Principal District Munsif, Cuddalore

P.R.SHIVAKUMAR, J.

asr/-

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