

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.06.2016

CORAM

THE HONOURABLE MR. JUSTICE M. DURAISWAMY

C.R.P.(PD)No.1844 of 2016 &

C.M.P.No.9650 of 2016

K.Palaniappan

... Petitioner

v.

1.L.Raju

2.L.Thangavelu

3.S.Manoranjitham

4.K.Vijaya

5.M.Hemamalini

6,Minor V.Yogamathy

7.Minor V.H.Mulainathan

(Minor respondents 6 & 7 represented by
next friend, guardian and their mother
Smt.M.Hema Malini, 5th respondent)

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 13.04.2016 in I.A.No.310 of 2015 in O.S.No.1278 of 2001 on the file of III Additional District Munsif Court, Coimbatore.

For Petitioner : Mr.C.R.Prasanan

O R D E R

Challenging the fair and final order passed in I.A.No.310 of 2015 in O.S.No.1278 of 2001 on the file of III Additional District Munsif Court, Coimbatore, the defendant has filed the above Civil Revision Petition.

2. The plaintiffs filed the suit in O.S.No.1278 of 2001 for permanent injunction. The defendant filed his written statement and is contesting the suit.

3. When the suit was taken up for trial, at the stage of cross examination of D.W.1, the defendant took out an application in I.A.No.310 of 2015 to reject the plaint.

4. The main contention raised by the defendant is that the suit filed by the plaintiffs for permanent injunction is not maintainable and that they should have sought for declaration of title.

5. Since the suit is at the advance stage of trial, I am of the view that the defendant should have filed the application at the earliest point of time to reject the plaint.

6. In the case on hand, the application, under Order VII, Rule 11 of CPC, was filed by the defendant after the commencement of the trial, i.e., when the suit was posted for cross examination of D.W.1

7. In these circumstances, the Trial Court, taking into consideration the case of both the parties, rightly dismissed the application.

8. In view of the above, I am of the view that there is no error or irregularity in the order passed by the Trial Court. However the issues raised by the defendant in the application filed under Order VII, Rule 11 of CPC can be decided in the suit by the Trial Court. Accordingly, I direct the III Additional District Munsif Court, Coimbatore to decide the issues raised by the defendant in the application filed under Order VII, Rule 11 of CPC, while deciding the suit, uninfluenced by any of the observations made by the Trial Court in I.A.No.310 of 2015 in O.S.No.1278 of 2001 .

With these observations, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No
Rj

22.06.2016

To

The III Additional District Munsif Court,
Coimbatore

M. DURAISWAMY,J.,

Rj

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