

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.02.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.567 of 2016
and C.M.P.No.2895 of 2016

Dr.D.Suresh Rajan
General Secretary,
National Missionary Society of India,
126, Peters Road,
Royapettah, Chennai-14.

... Petitioner

Vs

1.W.B.Sugirtharaj,
Branch Secretary,
National Missionary Society of India,
Gingee Branch, Gingee.

2.Rev.S.Neethinathan,
President,
National Missionary Society of India,
Gingee Branch, Gingee.

3.Rt.Rev.Dr.Philip Silas Masih,
President,
National Missionary Society of India,
126, Peters Road,
Royapettah, Chennai-14.

4.Dr.Grace Sathyaraj,
Vice President [HQ],
National Missionary Society of India,
126, Peters Road,
Royapettah, Chennai-14.

5.Rt.Rev.A.Rajavelu,
Vice President,
National Missionary Society of India,
Vellore.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to strike down the plaint in OS.No.25 of 2016 on the file of the Principal District Munsif Court, Gingee.

For Petitioner : Mr.S.Vadivel

ORDER

The 5th defendant in the suit in OS.No.25 of 2016 pending on the file of the Principal District Munsif Court, Gingee is the petitioner in the present Civil Revision Petition preferred under Article 227 of the Constitution of India. The prayer made in the Civil Revision Petition is that the plaint in the above said suit should be struck off. It has been made on the basis of the contention of the petitioner herein that the choice made by the 1st respondent/plaintiff regarding the place of suing is nothing but a glaring example of abuse of process. According to the petitioner, the cause of action did not arise either wholly or in part within the jurisdiction of the Munsif Court, Gingee and except the 1st defendant [2nd respondent in the Civil Revision Petition], no other defendant is a resident of a place within the jurisdiction of the Court of District Munsif, Gingee. In short, the contention of the petitioner is that the Court in which, the suit was filed does not have the jurisdiction to entertain the suit.

2. Mr.S.Vadivel, learned counsel for the petitioner submits that as per Section 20 of the Code of Civil Procedure, 1908 a suit can be filed in a Court within the local jurisdiction of which Court -

- (a) the defendant or each of the defendants, where there are more than one defendant, actually or voluntarily resides or carries on business or personally works for gain;

(b) in case, there are more than one defendants at the commencement of the suit, if any of the defendants actually and voluntarily resides or carries on business or personally works for gain, then with the leave of the Court, within whose local jurisdiction, such defendant or defendants resides or carries on business or personally works for gain.

According to the submissions made by the learned counsel for the petitioner, the Principal District Munsif, Gingee could not have entertained the suit, either under clause [a] or clause [b] of Section 20 of the Code of Civil Procedure, 1908. So far as clause [c] is concerned, it is the contention of the learned counsel for the petitioner that no part of the cause of action did arise within the jurisdiction of the Principal District Munsif, Gingee.

3. On the basis of the above said contention, learned counsel for the petitioner seeks an order from this Court to strike off the plaint in the above said suit. When a plaint is struck off as an abuse of process of Court, it shall have drastic consequences, namely, the plaintiff cannot have a further chance of filing a suit, even in the proper Court having jurisdiction to entertain the suit. The question of striking off the plaint shall arise, only in case of the suit being vexatious and abuse of process of Court, which abuse cannot be prevented invoking any other provisions of the Code of Civil Procedure. The only objection raised by the petitioner is that though the trial Court may have jurisdiction to entertain the suit, provided leave has been obtained since one of the defendants resides within the jurisdiction of the trial Court, no leave was obtained. When no leave was obtained as contemplated under Section 20[b] of the Code of Civil Procedure, 1908 that alone shall not be enough to non-suit the

plaintiff, because the very same sub clause provides that the Court can entertain jurisdiction, in case the other defendants acquiesce in the jurisdiction of the said Court. Suffice to point out there are other provisions dealing with the rights available to the defendants, who claim that the Court in which, the suit has been brought does not have the jurisdiction. In this regard, a reference to Section 21 of the Code of Civil Procedure, 1908 can be made. Section 21 says that objection to the place of suing should be taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, unless there has been a consequent failure of justice. The said Sections 20 and 21 of the Code of Civil Procedure, 1908 should be considered in the light of Order VII Rule 10 of C.P.C. Order VII Rule 10 of C.P.C. deals with the return of plaint at any stage for presentation in the proper Court. For better appreciation, Rule 10 is reproduced hereunder:

"10. Return of plaint - [1] [Subject to the provisions of Rule 10A, the plaint shall] at any stage of the suit to be returned to be presented to the Court in which the suit should have been instituted.

Explanation - For the removal of doubts it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule."

[2] Procedure of returning plaint - On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it."

4. It should be noticed that the territorial jurisdiction is not one of the grounds on which, the plaint can be rejected under Order VII Rule 11 of the Code of

Civil Procedure. A conjoint reading of Sections 20, 21, Order VII Rule 10 and Order VII Rule 11 will make it clear that the parties objecting to the jurisdiction of this Court shall raise the objection at the earliest opportunity in the Court in which this suit has been brought and such defendant himself or defendants themselves can seek an order under Order VII Rule 10 for the return of plaint on the ground that the Court in which it has been presented does have no territorial or pecuniary jurisdiction to entertain it. In such an event, the return shall be for presentation in the proper Court. In stead of adopting such a procedure which will not foreclose the right of the plaintiff to file the suit in the proper Court, the revision petitioner has chosen to seek an order from this Court striking off the plaint. If the plaint is struck off under Article 227 of the Constitution of India, as pointed out supra, the consequences will be drastic and the plaintiff may not be in a position to file a suit even in the proper forum.

5. For the above said reasons, this Court, comes to the conclusion that the prayer made in the Civil Revision Petition cannot be countenanced and the Civil Revision Petition deserves to be dismissed. Accordingly, the Civil Revision Petition is dismissed. However, the petitioner shall have a right to approach the trial Court raising a question regarding jurisdiction or to seek the return of the plaint to be presented in the proper Court. No costs. Consequently, connected Miscellaneous Petition is closed.

22.02.2016

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To
The Principal District Munsif,
Gingee.

P.R.SHIVAKUMAR, J.

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