

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P(NPD)No.633 of 2016
and
C.M.P.No.3288 of 2016

Jean Pierre Spielmann (deceased)
rep by his L.R. Nicolas Spielman
residing at No.2, Bis Rue du Marais,
Saint Mars de Coutais,
France
rep by his Power of Attorney Agent,
Archa V. Nair,

..... Petitioner

vs

Maria Therest Helen Trinite (deceased)

1. Claire Bernard
2. Oubly Francoise Patricia Neela
3. Trinite Patrick Prosper
4. Trinite Ludovic Joseph
5. Mermoz Evelyene Marie Sebestine Vijaya
6. John Christine Marie Prema

The respondents 2 to 6 are represented
by their Power of Attorney Agent
Marie Antoine Rouvier

.... Respondents

Civil Revision Petition filed under Section 115 of Civil Procedure
Code against the fair and decretal order passed in I.A.No.45 of 2013
in Unnumbered Cross Appeal No. of 2013 in A.S.No.1 of 2006 dated

22.01.2016 on the file of Principal District Judge, Puducherry.

For Petitioner : Mr.A.K. Kumarasamy

For respondents : Mr.R. Natarajan

ORDER

Challenging the fair and final order passed in I.A.No.45 of 2013 in Unnumbered Cross Appeal No... of 2013 in A.S.No.1 of 2006 on the file of Principal District Court, Puducherry, the third respondent, who is the first defendant in the suit in O.S.No.135 of 1987 on the file of Additional Sub Court, Puducherry, has filed the above Civil Revision Petition,

2 . The first respondent/plaintiff filed a suit in O.S.No.135 of 1987 for partition. The said suit was contested by the defendants. After taking into consideration the oral and documentary evidences, let in by the parties, the trial Court dismissed the suit, against which, the plaintiff preferred an appeal in A.S.No.1 of 2006. In the said appeal, the revision petitioner filed an application in I.A.No.45 of 2013 to condone the delay of 2694 days in filing the cross appeal. The application was contested by the plaintiff on the ground that the first defendant has not given sufficient reason for condoning the inordinate

delay of 2694 days. Not satisfied with the reasons stated in the affidavit, filed in support of the petition, the lower Appellate Court dismissed the application. The revision petitioner sought to file a cross appeal as against the adverse findings, given by the trial Court. Since the suit was dismissed in entirety, the plaintiff has filed the first appeal.

3. Admittedly, no decree was granted in favour of the plaintiff. In the judgment reported in **AIR 2003 SC 1989, (Banarsi and Others vs Ram Phal)**, the Hon'ble Supreme Court of India held that an appeal shall lie as against the decree and not against a mere finding or judgment. In paragraph-8 of the judgment, it has been held as follows:

"8. Sections 96 and 100 of the CPC make provision for an appeal being preferred from every original decree or from every decree passed in appeal respectively; none of the provisions enumerates the person who can file an appeal. However, it is settled by a long catena of decisions that to be entitled to file an appeal the person must be one aggrieved by the decree. Unless a person is prejudicially or adversely affected by the

decree he is not entitled to file an appeal. See Phoolchand and another vs Gopal Lal, 1967 (3) SCR 153; Smt.Jatan Kanwar Golcha vs M/s Golcha Properties (P) Ltd., 1970(3) SCC 573; Smt.Ganga Bai vs Vijay Kumar and others, (1974) 2 SCC 393. No appeal lies against a mere finding. It is significant to note that both Sections 96 and 100 of the CPC provide for an appeal against decree and not against judgment."

4. When the first defendant sought to file a cross appeal as against the adverse finding, in view of the judgment of the Hon'ble Supreme Court of India, the same is unnecessary. Therefore, following the ratio laid down by the Hon'ble Supreme Court of India, I am of the view that the cross appeal, filed by the first defendant, as against the adverse finding, is not maintainable. However, since the decree passed in O.S.No.135 of 1987, is under challenge by the plaintiff in A.S.No.1 of 2006, before the Principal District Court, Puducherry, it is open to the first defendant to raise all the issues, which were raised by him in the written statement, before the lower appellate court. The Principal District Judge, Puducherry is directed to decide all the issues afresh based on the available pleadings, oral and documentary evidences.

5. In these circumstances, I do not find any merit in the civil revision petition and the civil revision petition is liable to be dismissed and accordingly, the same is dismissed.

6. Since the appeal in A.S.No.1 of 2006 is pending from 2006, I direct the Principal District Judge, Puducherry to dispose of the appeal, on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

No costs. Consequently, connected CMP is closed.

16-06-2016

sr

Index:no
website:yes

To

1. The Principal District Court, Puducherry
2. The Additional Sub Court, Puducherry

M. DURAISWAMY,J.,

sr

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16.6.2016