

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.848 of 2016

&

C.M.P.No.4705 of 2016

1.Kuppayammal
2.R.Thulasimani

... Petitioners

vs.

1. R.Ganasigamani
2.Alliyammal
3.R.Manickasundaram

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 20.04.2015 made in I.A.No.100 of 2015 in O.S.No.414 of 2012 on the file of the II Additional District Munsif Court, Erode.

For Petitioners : Mr.S.Lakshmanasamy

ORDER

The plaintiffs 1 and 2 in the original suit O.S.No.414 of 2012 pending on the file of II Additional District Munsif, Erode are the petitioners in the present revision preferred under Article 227 of the Constitution of India.

2. The above said suit was filed by the petitioners herein and also by the third respondent herein, who figured as third plaintiff, for the reliefs of partition and separate possession. The suit is being contested by respondents 1 and 2 /defendants 1 and 2. Subsequently, there arose a conflict of interest between the petitioners 1 and 2/plaintiffs 1 and 2 and the third respondent/third defendant, who originally figured as the third plaintiff. By order dated 19.11.2013, made in I.A.No.451 of 2013, the third respondent herein was transposed as a defendant and ranked as third defendant in the suit. The plaint was also accordingly amended.

3. Thereafter, the third respondent/third defendant filed a written statement in June 2014. The petitioners/plaintiffs, after waiting for 8 months, filed an application in I.A.No.100 of 2015 under Order VI Rule 16 CPC to strike off certain portions in the written statement. The same was resisted by the third respondent and after hearing both sides, the learned trial Judge, holding the petition to be frivolous, dismissed the same by order dated 20.04.2015. As against the said order, the present Civil Revision Petition has been filed. The revision was returned pointing out defects and the same was re-presented rectifying the defects only on 04.03.2016.

4. The grounds on which the petitioners/plaintiffs 1 and 2 seek

striking off the portions of the written statement of the third respondent/third defendant are those portions which are in conflict with the plaint averments. The same cannot be a reason germane to a prayer for striking off the pleading. The said pleading cannot be said to be unnecessary, scandalous, frivolous or vexatious. The said pleading also cannot be said to be tending to prejudice, embarrass or delay the fair trial of the suit. It cannot also be said to be an abuse of process of Court. Rule 16 under Order VI enables the Court to strike out the pleadings 1) which are unnecessary, scandalous, frivolous and vexatious; 2) which contains pleadings tending to prejudice, embarrass or delay the fair trial of the suit; and 3) which is otherwise an abuse of process of Court.

5. The petitioners are not able to bring the portions of the written statement of D3 sought to be struck off within the ambit of any one of the above said categories. Simply because the third defendant had been co-opted as a plaintiff originally, he cannot be prevented from taking his own defence after being transposed as a defendant. If at all there is any collusion between the plaintiff and the transposed defendant, the party aggrieved shall be the original defendants and not the present plaintiffs. The plaintiffs, after having, paved the way for the transposition of the erstwhile third plaintiff as

third defendant, cannot now seek to prevent the third defendant from raising his plea of defence, that too, simply on the ground that they are in conflict with the plaint averments.

6. The learned trial Judge, properly considered the above said aspects and came to the conclusion that the application for striking out portions of the pleadings of the third defendant in his written statement could not be sustained. This Court does not find any defect or infirmity in the order passed by the trial Court warranting interference in this revision. There is no merit in the revision and the same does not even merit admission.

In the result, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

16.03.2016

Index: Yes/No
Internet: yes/No
gpa

To

II Additional District Munsif Court
Erode

P.R.SHIVAKUMAR.J.,

gpa

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