

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2016

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP.PD.No.1611 of 2006

and

M.P.No.1 of 2006

K.Shanmugasundaram

..Petitioner

Vs.

K.Mohan Kumar

..Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decreetal order of the trial court dated 25.08.2006 in I.A.No.23277 of 2004 in O.S.No.6244 of 2003 and reject the plaint in O.S.No.6244 of 2003.

For Petitioner : Mr.T.Paranthaman

For Respondent : Mr.S.Balasubramanian

ORDER

Civil Revision Petition arises against the order and decreetal order dated 25.08.2006 passed in I.A.No.23277 of 2004 in O.S.No.6244 of 2003 on the file of learned XI Assistant Judge, City Civil Court, Chennai.

2. The respondent/plaintiff filed O.S.No.6244 of 2003 against the revision petitioner/defendant seeking a direction to handover 10 sovereigns of gold jewels as 1/7th share or its value

Rs.40,000/- and a direction to execute sale deed of Plot.No.47, Chembakkam Village, comprised in S.No.1/3, Chembakkam Village as per the Will of deceased, Saraswathi Ammal, Letters of Administration granted by this Court in O.P.No.818 of 2000 on 17.09.2002. Resisting the suit, the defendant has filed written statement denying the averments made in the plaint.

3. Pending suit, subsequently, the petitioner/defendant filed I.A.No.23277 of 2004 under Order VII Rule 11 (b) & (d) seeking rejection of plaint on the following grounds:

i) the trial court has no territorial jurisdiction to try the above suit

ii) the plaintiff has to pay Court Fee u/s.24(1) (a) instead of 24(2) (a) (ii) of the Tamil Nadu Court Fees Act and for prayer (b) the plaintiff has to pay court fee on the market value of the property as on the date of the suit,

iii) that a case based on Benami Transaction is barred under the provisions of the Benami Transaction (Prohibition) Act and

iv) the defendant is residing outside the jurisdiction of the trial court.

4. In the aforesaid I.A.No.23277 of 2004, counter affidavit has been filed by the respondent/plaintiff to dismiss the said IA. By order dated 25.08.2006, the trial court dismissed the

I.A.No. 23277 of 2004 by holding that it is not maintainable, under Order VII Rule 11 (b).

5. Aggrieved by the said order dated 25.08.2006, the petitioner/defendant has filed the above Civil Revision Petition before this Hon'ble Court.

6. Heard Mr.T.Paranthaman, learned counsel for the revision petitioner and Mr.S.Balasubramanian, learned counsel for the respondent and perused the records.

7. The trial court considering the facts and circumstances of the case has held that the application filed by the revision petitioner/defendant is not maintainable for the reasons that *(i) the plaintiff has prayed for relief on the basis of the Will of his mother, Mrs.Saraswathi Ammal but not on the basis of the benami transaction and the said issue has to be decided only at the time of disposal of suit.*

(ii)The order passed by the trial court is a reasonable one.

8. Therefore, no interference is required with the order passed by the Trial Court. Moreover, the grounds raised in the I.A.No.23277 of 2004, filed under Order VII Rule 11 (b) and (d) of

CPC for rejection of plaint is already raised in the written statement filed by the revision petitioner / defendant, in the suit.

9. Therefore, in the interest of justice, I am inclined to pass the following orders:

(i) The impugned order passed in I.A.No. 23277 of 2004 in O.S.No.6244/2003 on the file of XI Assistant, City Civil Court, Chennai, dated 25.08.2006 is hereby confirmed and the Civil Revision Petition is dismissed.

(ii) It is open to the revision petitioner to file an appropriate application for framing of additional issues before the Trial Court. On filing of such application, the trial court is directed to consider the same on merits and uninfluenced by the order passed in I.A.No.23277 of 2004 in O.S.No.6244 of 2003 on the file of XI Assistant, City Civil Court, Chennai and

(iii) The Trial Court is also directed to dispose of the suit, on merits, as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

18.04.2016

gv

Index :Yes/No
Internet:Yes/No

To

The learned XI Assistant Judge,
City Civil Court,
Chennai.

D.KRISHNAKUMAR,J.

gv

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