



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2016

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. (MD) No.1689 of 2016

Madasamy(died)

1. Malaiammal
2. Prema
3. Saraswathi
4. Minor. Baskar
5. Minor. Pushpa

(4th and 5th petitioners are represented by their mother and guardian Malaiammal, 1st petitioner)

..Petitioners/Respondents 2 to 6/
Addl.Plaintiffs

Vs.

1. Sheela ..Respondent/Petitioner/4th Defendant
2. Jeyaprakash
3. Rajesh Gupta
4. Jebasthiyan
5. Xavier John Peter ..Respondents/Respondents 7 to 10/
Defendants 2,3,5 & 6

(As no relief is claimed against 2nd to 5th respondents, notice to them is given up)

PRAYER: Petition is filed under Section 115 of Civil Procedure Code, to allow this Civil Revision petition and thereby set aside the fair and decreetal order, dated 13.04.2015 in I.A.No.302 of 2015 in O.S.No.238 of 2011 on the file of the learned District Munsif, Kovilpatti.

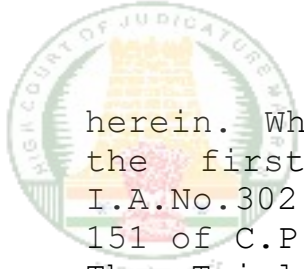
For Petitioners : Mr. B.Rajesh Saravanan
For Respondent : Mr. K.Sekar for R1
For R2 to R5 : Given up.

O R D E R

This Civil Revision arises out of the order passed by the learned District Munsif, Kovilpatti, in I.A.No.302 of 2015 in O.S. No.238 of 2011, dated 13.04.2015.

2. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents and perused the records.

3. According to the learned counsel for the petitioner, the suit in O.S.No.238 of 2011 filed by one Madasamy(died), for declaration and permanent injunction against the respondents



herein. When the summons were served to the respondents herein, the first respondent/4th defendant filed an application in I.A.No.302 of 2015 under Order 7 Rule 11(a)(b) & (d) r/w Section 151 of C.P.C., before the Court below to reject the plaint.

The Trial Court allowed the application filed by the first respondent herein, without considering the case of the petitioners herein and further he submitted that the findings of the Court below is totally wrong, erroneous and unsustainable in law.

4. Per contra, the learned counsel for the respondents submitted that the application filed by the first respondent herein, has rightly considered by the Trial Court and the said application was allowed by the Trial Court, by considering the contention raised by the respondents under Order 7 Rule 11(a) (b) & (d) r/w Section 151 of C.P.C. Hence, therefore there is no warrant of interference by this Court. Hence, the Civil Revision petition is liable to be dismissed.

5. It is an admitted fact that the suit was filed for declaration and permanent injunction. In the aforesaid suit, the summons were served to the respondents herein, the first respondent herein filed the application under Order 7 Rule (a) (b) & (d) r/w Section 151 of C.P.C. The Trial Court, after considering the contention put forth by the first respondent herein, allowed the said application. Now the petitioners herein challenging the said order before this Court, by raising the various grounds and submitted that the order of the Court below is illegal, contrary, erroneous and unsustainable in law and the same has liable to be dismissed. However, it is seen that once under Order 7 Rule 11(a) (b) and (d) r/w Section 151 of C.P.C., was allowed by the Trial Court, it should be considered as decree. Definition under Section 2(2) of C.P.C., wherein it is stated as follows:-

" 'decree' means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within (omitted by Act 104 of 1976) Section 144, but shall not include-

*(a) any adjudication from which an appeal lies as an appeal from an order, or
(b) any order of dismissal for default.*

Explanation : A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication



completely disposes of the suit. It may be partly preliminary and partly final; "

As per the provisions, it has been clear that the decree means which includes the rejection of a plaint. Therefore, against the rejection of the plaint, the appeal lies before the Appellate Court. Therefore, the Civil Revision petition itself is not maintainable before this Court under Article 227 of Constitution of India.

6. The learned counsel for the petitioner relied upon the decision rendered in (2010) 3 SCC 192, in the case of *Harjinder Singh Vs. Punjab State Warehousing Corporation*, in paragraph No. 13, wherein it is stated as follows:-

" ... (7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a Subordinate Court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in a an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/ or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis."

The said Judgment has not been discussed, filing the Civil Revision petition without exhausting alternative remedy.

7. The recent decision of the Hon'ble Supreme Court in 2016 SAR(Civil) 695 in the case of *Rishabh Chand Jain and another Vs. Ginesh Chandra Jain*, at paragraph No.15, wherein it is observed as

"The impugned order dismissing the suit on the ground of Res Judicata does



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not cease to be a decree on account of a procedural irregularity of non-framing an issue. The Court ought to treat the decree as if the same has been passed after framing the issue and on adjudication thereof, in such circumstances. What is to be seen is the effect and not the process. Even if there is a procedural irregularity in the process of passing such order, if the order passed is a decree under law, no revision lies under Section 115 of the Code in view of the specific bar under sub-Section (2) thereof. It is only appealable under Section 96 read with Order XLI of the Code."

In the light of the aforesaid decision of the Hon'ble Supreme Court, this Court cannot exercise the power under Article 227 of Constitution of India, by straightaway challenging the Judgment and Decree passed by the learned District Munsif, Kovilpatti in the aforesaid suit.

8. Therefore, since the definition under Section 2(2) of C.P.C., have been defined as decree and the petitioners are having an appeal remedy before the Appellate Court. Hence, challenging the said Judgment and decree in the present Civil Revision petition is not maintainable. Hence, I am not inclined to entertain the Civil Revision petition on the ground of maintainability. However, this order will not preclude the petitioners to approach before the appropriate Court to raise all the contentions in the appeal.

9. In view of the said dictum laid down by the Hon'ble Apex Court and the facts and circumstances of the case, the Civil Revision petition is dismissed with a liberty to the petitioner to file an appeal against the Judgment and Decree passed in O.S.No.238 of 2011 before the Appellate Court within four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS)

To

The District Munsif, Kovilpatti.

+1cc to M/s.B.Rajesh Saravanan, Advocate in SR.55879

+1cc to M/s.K.Sekar, Advocate in SR.55891

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