



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP (MD) No.2560 of 2016

and

C.M.P (MD) No. 12055 of 2016

1. Thomas
2. Vijaykumar : Petitioners/ Petitioners/
Defendants

Vs.

1. Jeyakani : 1st Respondent/ Petitioner/
Defendant
2. Rathipushpam : 2nd Respondent/ 2nd Respondents/
3rd Defendant

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set-aside the Fair and Decreetal order dated. 15.09.2016 passed in I.A.No.134 of 2016, in O.S.No.28 of 2007 on the file of Additional District Munsif Court, Valliyoor.

For Petitioner : Mr. D. Nallathambi

O R D E R

This Civil Revision Petition is filed to set-aside the Fair and Decreetal order dated 15.09.2016 passed in I.A.No.134 of 2016, in O.S.No.28 of 2007 on the file of learned Additional District Munsif Court, Valliyoor.

2. The petitioners are the defendants 1 and 2. The first respondent is the plaintiff. The second respondent is the third defendant in O.S.No.28 of 2007 on the file of the learned Additional District Munif, Valliyoor.

3. The first respondent filed a suit for partition against the petitioners and second respondent. After preliminary decree was passed on 19.07.2010 in O.S.No. 28 of 2007, against the said Judgment and decree the petitioners filed A.S.No. 55 of 2010 on the file of the Sub Court, Valliyoor. The learned Subordinate Judge allowed the appeal and remanded to the trial Court with a direction to frame additional issue as to whether the suit filed



is maintainable for partial partition as claimed by the petitioners in the additional written statement.

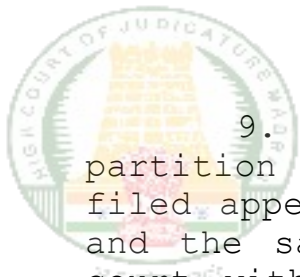
4,. After remand, the first respondent was examined in chief and posted for cross examination. The petitioners filed I.A.No.134 of 2016 for permission to file additional written statement to raise a plea that the learned Subordinate Judge has no pecuniary jurisdiction to try the suit as the value of the property is more than Rs.5,00,000/-. The first respondent filed counter in the aforesaid application and submitted that value of the property given in the plaint is correct and the suit is remanded for permission to file petition to amend the plaint to include the properties left out. The trial Court cannot go beyond the direction given by the Appellate Court. At the time of filing suit commercial complex was not in the suit property. The value of the suit property is correct and valued the suit properly. The petitioners estopped from raising the plea as stated in the application after remand by the appellate Court.

5. The learned Judge has considered the averments made in the affidavit and counter affidavit and judgments of the first appellate Court and the arguments of the learned counsel for the parties and the judgments relied on by the counsel for the petitioners dismissed the application holding that trial Court cannot go beyond the direction given by the appellate Court at the time of remand and the petitioners have not given any reason for not taking this plea at the time of filing written statement.

6. Against the said order of dismissal, the present revision has been filed.

7. The learned counsel appearing for the petitioners submitted that the trial Court Judge ought to have liberally considered the application filed under Order 8 Rule 9 of CPC to receive the additional written statement and the delay is not ground for rejecting the said application. The first appellate Court remanded the suit to the trial Court and given liberty to the first respondent to amend the plaint and therefore, the petitioners are entitled to file additional written statement and there is no restriction in the judgment of the appellate Court for the petitioners to file the additional written statement. On hyper technical ground of delay valuable right of the petitioners should not be shut out by dismissing application for filing additional written statement. After remand, the suit is at the stage of cross examination of PW.1. Therefore, no prejudice will be caused to the first respondent and prayed for allowing the Civil Revision Petition.

<https://hcservices.ecourts.gov.in/Hcservices> I have heard the learned counsel appearing for the petitioner and perused the materials available on record.



9. From the records it is seen that the suit filed for partition and a preliminary decree was passed. The Petitioners filed appeal in A.S.No.55 of 2010 against the preliminary decree and the said appeal was allowed and remanded back to the trial court with a specific direction to frame additional issue with regard to claim made by the petitioners that suit is not maintainable as the first respondent claimed only partial partition. The first respondent was given permission to file a petition to amend the plaint to include the other properties for partition. There is nothing on record to show that the first respondent has filed a petition for amendment to include the other properties also. It is not the case of the petitioners that by inclusion of other properties value of the properties increased. Therefore, the learned Judge has no pecuniary jurisdiction to try the suit. Their specific case is value of the suit property is more than Five Crores and therefore, the learned Judge has no pecuniary jurisdiction to try the suit. In the application for filing additional written statement he has not given any reason for raising this plea in the additional written statement already filed.

10. The learned Judge considered the Judgment of the first appellate court remanding the suit, the contention of the learned counsel for the petitioners and the judgment relied on by them dismissed the I.A.No.134 of 2016 in O.S.No.28 of 2007 on the file of the learned Additional District Munsif, Valliyoor, dated 15.09.2016 on giving valid and cogent reasons after exercising jurisdiction conferred on him. In such circumstances there is no irregularity or illegality in the order passed by the Court below.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed

Sd/-

Assistant Registrar(CSII)

/True Copy/

Sub Assistant Registrar

TRP
To

The learned Additional District Munsif Court, Valliyoor

+1cc to Mr.D.Nallathambi, Advocate Sr.No. 81511

JAM/31.01.2017/SV-MMS/3P-3C