

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMAINAM

C.R.P.(P.D.) No.1509 of 2014

and

M.P.No.1 of 2014

1. Murugesan

2. Dhandapani

3. Thailammal

4. Mani @ Kumareswari

5. Padma

6. Rani

... Petitioners

Vs.

Jagathambal

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 14.08.2013 passed in I.A.No.303/2012 in O.S.No.83/2011 on the file of II Additional District Court, Salem.

For Petitioners : M/s.R.Meenal

For Respondent : Mr.P.Jagadeesan

ORDER

The Civil Revision Petition is filed challenging the order dated 14.08.2013 passed in I.A.No.303 of 2012 in O.S.No.83 of 2011 on the file of II Additional District Court, Salem.

2. The suit is filed for partition and during the pendency of the suit the defendants initially filed an application in I.A.No.154 of 2012 in O.S.No.83 of 2011 raising the question of jurisdiction of the Court to entertain the plaint and also the point of Court fee. Both the issues were decided by the trial Court on 31.08.2012 by allowing I.A.No.154 of 2012 in O.S.No.83 of 2011 and the additional issues were also framed by the trial Court. After framing the additional issues, the suit was listed for trial. At that point of time, the petitioners / defendants filed I.A.No.303 of 2012 in O.S.No.83 of 2011 once again with a prayer to try additional issues as preliminary issue. The said I.A.No.303 of 2012 in O.S.No.83 of 2011 was considered by the trial Court and the same was rejected mainly on the ground, that the earlier I.A.No.154 of 2012 in O.S.No.83 of 2011 was allowed relating to question of the jurisdiction of the Court as well as the point of Court fee and additional issues were framed. Further, the suit was posted for trial and at that point of time, the additional issues cannot be raised as a preliminary issue under Order 14 Rule 2 of the Civil Procedure Code. Further, the issues raised by the defendants cannot be considered as pure question of law and the same can be very well be adjudicated and decided along with other issues in the main suit itself.

3. The learned counsel appearing for the petitioners submitted that the suit itself is misconceived, since it was filed before the Court, which has

no jurisdiction and also about the point of Court fee. Such being the contention, the trial Court ought not to have rejected the petition. Further, these are the issues that has to be decided as preliminary issue and trial Court has committed an error in rejecting the petition by linking this additional issues along with main issue framed in the suit.

4. The learned counsel appearing for the respondent opposed the petition by stating that the earlier I.A.No.154 of 2012 in O.S.No.83 of 2011 was allowed on 31.08.2012. Pursuant to that order, additional issues were framed and the suit is ripe for trial. Therefore, the reason given by the trail Court is sound enough to reject the present revision petition.

5. Considering the rival contentions raised by both the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

6. This Court is of the opinion that the earlier I.A.No.154 of 2012 in O.S.No.83 of 2011 was allowed and the additional issues were framed by the trial Court. Further, the suit itself was posted for trial and at this point, the reasons assigned by the trial Court is sufficient to reject the claim of the petitioner to raise the additional issues as preliminary issue. Hence this

S.M.SUBRAMANIAM,J.

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Court does not find any merit in the present Civil Revision Petition and accordingly the order passed by the trial Court in I.A.No.303 of 2012 in O.S.No.83 of 2011 dated 14.08.2013 is confirmed and the Civil Revision Petition No.1509 of 2014 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.01.2017

Index : Yes
Internet : Yes

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To
The II Additional District Judge,
The II Additional District Court,
Salem.

C.R.P.(P.D.) No.1509 of 2014

<http://www.judis.nic.in>