

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1946 of 2017
& C.M.P.No.9451 of 2017

Mukunthasamy

.. Petitioner

Vs.

1. Valliammal
2. Lucky Thiyagaraju
3. Lucky Komaresan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 21.02.2017 made in I.A.No.669 of 2015 in O.S.No.713 of 2012 on the file of the District Munsif Court, Avinashi.

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For Petitioner : Mr.S.Kaithamalai Kumaran

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 21.02.2017 made in I.A.No.669 of 2015 in O.S.No.713 of 2012 on the file of the District Munsif Court, Avinashi.

2. The petitioner is 2nd defendant and respondents are plaintiffs 2 to 4 in O.S.No.713 of 2012. Originally, the suit in O.S.No.713 of 2012 was filed by one Lucky V.K.Palanisamy goundar for mandatory injunction and permanent injunction in the year 2008. The original plaintiff died and subsequently, the respondents were impleaded as plaintiffs 2 to 4. Defendants 1 and 3 filed written statement in the month of July 2012 and are contesting the suit. The petitioner filed written statement in the year 2014 and is contesting the suit. The petitioner filed I.A.No.669 of 2015 under Order VII Rule 11 C.P.C to reject the plaint.

3. According to the petitioner, originally, the first plaintiff/late Lucky V.K.Palanisamy goundar filed O.S.No.315 of 1974 on the file of the District Munsif Court, Erode, against the father of the petitioner. When the suit was posted for trial, the first plaintiff

sought permission to withdraw the suit and to file fresh suit for the same cause of action. The said permission was granted to withdraw the suit and file a fresh suit within a period of six months from the date of withdrawal of the suit. The first plaintiff did not file any suit within a period of six months and filed O.S.No.140 of 2001 on the file of District Munsif Court, Perundurai, after expiry of six months. Again the first plaintiff sought permission to withdraw the suit and file fresh suit on the same cause of action due to formal defect in the plaint. The permission was granted to the first plaintiff to file a fresh suit within a period of six months. The first plaintiff filed the present suit on the same cause of action without mentioning the formal defects in the earlier suit and rectifying the said defects.

4. The respondents 1 to 3 filed counter affidavit opposing the said application and submitted that the first suit was for permanent injunction based on the cause of action arose on 16.02.1974. The second suit is not on the same cause of action and not for the same relief. The second suit in O.S.No.140 of 2001 is filed for mandatory injunction and injunction based on the new cause of action subsequently arose. Permission was granted to withdraw the said

suit and file fresh suit on the same cause of action within a period of six months. The present suit was filed in the year 2008 and subsequently it was transferred to District Munsif Court, Avinashi and re-numbered as O.S.No.713 of 2012. The plaint can be rejected only for the grounds mentioned in Order VII Rule 11 C.P.C. The reason given by the petitioner for rejection of the plaint is not one of the reason mentioned in Order VII Rule 11 C.P.C. Further, the petitioner has filed written statement, raising this objection and necessary issues are also framed. When the suit is posted for trial, the present application is filed in the year 2014 belatedly and thus, prayed for dismissal of the said application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit, materials available on record and the documents filed along with the plaint, dismissed the application.

6. Against the order of dismissal dated 21.02.2017 made in I.A.No.669 of 2015, the present civil revision petition is filed by the petitioner.

7. Heard the learned counsel for the petitioner and perused the materials available on record.

8. From the facts narrated above, which are on record, it is seen that the petitioner is seeking to reject the plaint on the ground that the first suit in O.S.No.315 of 1974 was permitted to withdraw with liberty to file fresh suit on the same cause of action within a period of six months. The first plaintiff did not file suit within six months on the same cause of action. The present suit is filed for the very same relief. The petitioner is seeking an order to reject the plaint on the ground that O.S.No.140 of 2001 was not filed within the time granted by the Court i.e., six months. It is not a ground for rejection of the plaint. Except grounds mentioned in Order VII Rule 11 C.P.C., the plaint cannot be rejected.

9. The learned Judge extracted the provision of Order VII Rule 11 C.P.C and considered the same and held that the reason given by the petitioner to reject the plaint is not the ground mentioned in Order VII Rule 11 C.P.C. The learned Judge also taking note of the fact that the suit is of the year 2008, based on the written statement filed by the petitioner and other defendants, framed

issues. Trial commenced and the respondents let in evidence. Considering the reason given in the impugned order, I am of the view that the civil revision petition is devoid of merits.

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

29.06.2017

Index : Yes/No
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V.M.VELUMANI, J.

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To

The District Munsif Court
Avinashi.



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