

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.786 of 2011

and

M.P.No.1 of 2011

Raja

.. Petitioner

Vs.

Chitra

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, against the fair and decreetal order dated 10.12.2010 made in I.A.No.171 of 2010 in O.S.No.40 of 2010 on the file of the Principal District Court, Dharmapuri.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.P.Valliappan

ORDER

This revision is directed against an order dated 10.12.2010 made in I.A.No.171 of 2010 in O.S.No.40 of 2010 on the file of the learned Principal District Judge, Dharmapuri. The petitioner herein is the defendant in the main suit.

2.The record reveals that the above suit in O.S.No.40 of 2010 is filed by the respondent namely Chitra as plaintiff seeking for partition and separate possession as against the revision petitioner herein who claim to be her father.

3.As per the plaint, it is averred that the revision petitioner being her father has failed to maintain herself and her mother Suroja (wife of revision petitioner) at the ill advice of one Murugammal on account of illicit relation prevailing between them.

4.In the said circumstance, the respondent/plaintiff Chitra filed an application in I.A.No.171 of 2010 under Order 23, Rule 1 and Section 151 of CPC, seeking leave of the Court to permit her to withdraw the above suit with liberty to file a fresh suit on the same cause of action. The reason projected by the respondent to file a fresh suit was that to enable her to file a suit on the basis of a subsequent deed and also to include some other parties and few other properties.

5.The said application is found resisted by the petitioner herein contending that the respondent cannot file a fresh suit as the cause of action of the instant suit itself is untrue and untenable, more so it is also his contention that by way of filing a fresh suit the respondent

intend to project a new case by changing her claim in the instant suit.

6. On hearing the above I.A., the learned trial Judge by imposing a cost of Rs.1000/- allowed the respondent's application which was filed to withdraw the instant suit and to file a fresh suit in same cause of action.

7. I heard Mr.N.Manokaran, learned counsel for revision petitioner and Mr.P.Valliappan, learned counsel for the respondent and perused the materials available on record.

8. At this juncture, it is found that subsequent to the allowing of above application on 10.12.2010, the respondent has filed a fresh suit in O.S.No.08 of 2011 for partition and separate possession and permanent injunction and also to declare a partition deed suit said to have executed by the revision petitioner and others as fraudulent and null and void. It is further found that in the said suit the defendants 5 to 7 entered appearance and the other defendants remained exparte and the suit is posted for framing issues. It is equally important to state that the respondent has sought liberty to withdraw the suit to file a fresh suit on the same cause of action by contending that there is a fraudulent partition deed dated 15.03.2010 executed and the same is liable to be declared as null and void.

9.The above factual circumstance would demonstrate that the respondent has filed a fresh suit in O.S.No.08 of 2011 and the same was taken on file and issues are yet to be framed. In such circumstance, it is needless to say that the revision petitioner can very well contest the later suit in O.S.No.08 of 2011 and to defend the same with all objections and defense and more particularly can raise a defense if a new case is introduced in the later suit. But it is seen that the revision petitioner remained ex-parte in the above suit.

10.However, by not doing so, the revision petitioner by way of this civil revision petition challenges the liberty given by trial Court. It is equally important to state that both the suits are filed in the very same Court. Therefore I do not find any merit in this revision petition and the same is hereby dismissed. However, the dismissal of this civil revision petition cannot stand in the way of revision petitioner's right to defendant (or) appear in the subsequent suit. It is made clear that this Court has not expressed any view over the merits and demerits of the case and the same is liable to be gone through by the trial Court.

11.In the result, this civil revision petition is dismissed by confirming the order in I.A.No.171 of 2010 in O.S.No.40 of 2010, dated 10.12.2010, on the file of the learned Principal District Judge,

Dharmapuri. No costs. Consequently, connected miscellaneous petition is closed.

27.04.2017

vs

Note: Issue order copy on 13.12.2018

Index: Yes

Internet: Yes

To

The Principal District Court, Dharmapuri.



WEB COPY

M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(NPD)No.786 of 2011
and
M.P.No.1 of 2011

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