

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2017

Coram

The Hon'ble Ms. Justice V.M.Velumani

C.R.P. (PD) No.4326 of 2015
and
M.P.No.1 of 2015

G.Ekkambaram ... Petitioner

Versus

1.G.Kaliyaperumal
2.Bramambal
3.Rani
4.Chandira
5.Uthirapathi ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order made in I.A. No.490 of 2014 in O.S.No.153 of 2014, dated 08.09.2015 on the file of the District Munsif Court, Mannargudi.

For Petitioner .. Mr.S.Thiruvengataswamy

For Respondents .. Mr.M.V.Venkateseshan

ORDER

Challenging the order passed in I.A. No.490 of 2014 in O.S.No.153 of 2014 on the file of the District Munsif Court, Mannargudi, the 4th defendant

has filed the above Civil Revision Petition. The plaintiff is the 1st respondent in the suit and the respondents 2 to 5 are defendants 1 to 3 and 5 in the suit.

2. The first respondent filed the suit in O.S.No.153 of 2014 for partition and separate possession against the petitioner and respondents 2 to 5. The petitioner and 5th respondent have filed their written statement and are contesting the suit. The other respondents have not filed their written statement. The Trial has commenced. The evidence on behalf of the first respondent was closed and the suit was posted for the evidence on behalf of the petitioner. At that stage, the petitioner filed in I.A. No.490 of 2015 under Order VII Rule 11, read with Order XIV Rule 2 and Section 151 of Civil Procedure Code to decide the issue with regard to the Court fee paid by the first respondent as a preliminary issue.

3. According to the petitioner, the first respondent has under valued the suit property and has not paid the correct Court fee. The first respondent has filed counter opposing the said application and stated that he has paid the correct Court fee. Further, the first respondent has stated that already the trial has commenced and hence, the application filed under

Order VII Rule 11 read with Order XIV, Rule 2 and Section 151 of Civil Procedure Code, with regard to Court fee has to be dismissed.

4. The learned trial Judge after considering the affidavit and counter affidavit dismissed the application holding that already the trial has commenced and the suit was posted for recording the evidence on behalf of the petitioner and other respondents 2 to 5 and at this stage, the application filed to decide the issue with regard to Court fee as preliminary issue is not maintainable.

5. Against the order of dismissal, dated 08.09.2015, the present Civil Revision Petition has been filed.

6. Heard the learned counsel on either side and perused the materials available on record.

7. It is the contention of the learned counsel for the petitioner that the first respondent has under valued the suit property and has not paid the correct Court Fee. However, it is the contention of the learned counsel for the first respondent that the first respondent has valued the suit property

correctly and paid the Court fee. It is the further contention of the learned counsel for the first respondent that the trial Court has framed the issues and the trial has commenced and the evidence on the side of the plaintiff was also closed. Further he submits that now the suit has been posted for recording the evidence on behalf of the petitioner. Hence, the present petition filed is not maintainable.

8. I have considered the submissions made by the learned counsel on either side and perused the materials available on record.

9. On a perusal of the documents filed in support of the above application, I find that the petitioner has not filed any documents to disprove the value given by the first respondent. Since the issue with regard to Court fee is a mixed question of law, it cannot be decided as a preliminary issue. In view of the fact that the trial had commenced and evidence on behalf of the first respondent had been closed, I.A. No.490 of 2014 is devoid of merits.

10. Considering the above facts, I am of the opinion that the petitioner is not entitled for the relief sought for in the Civil Revision Petition. The

learned Judge has properly exercised his powers conferred on him and dismissed the application by giving cogent and valid reasons. There is no irregularity or illegality warranting interference by this Court.

11. In the result, the Civil Revision Petition is dismissed. The suit is of the year 2014, the learned District Munsif, Mannargudi is directed to dispose the suit in O.S.No.153 of 2014 as expeditiously as possible in any event not later than 31.08.2017. No costs. Consequently, connected Miscellaneous Petition is closed.

18.04.2017

Speaking / Non speaking
vsi2

V.M.VELUMANI, J.

vsi2

To
District Munsif Court, Mannargudi.

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