

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(PD)No.2812 of 2007
and
M.P.No.1 of 2007

- 1.Govindaraj
 - 2.Usha
 - 3.Selvam
 - 4.Sekar
 - 5.Marudhaiyamma
 - 6.Minor Mariadoss
 - 7.Minor Amalorpavamarie
 - 8.Minor Aravind
- (Minor Petitioners 6 to 8 are
rep. by their Guardian Selvam viz.,
3rd petitioner herein.)

9.Pakkirisamy (Died)

10.Sumathi

11.Jayanthi

12.Velu Murugan

13.Selvaraj

.. Petitioners

(Petitioners 11 to 13 are brought as
Legal Representatives of the deceased
9th petitioner, as per the Court order
dated 15.04.2016 in MP.No.3 of 2015
in CRP(PD)No.2812 of 2007.)

Vs.

1.Anbalagan

2.Manappan

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the set aside the order dated 27.04.2006 made in I.A.No.169 of 2004 in O.S.No.(unnumbered) of 2004 on the file of the Court of the Additional District Judge, Pondicherry at Karaikal.

For Petitioners : Mr.T.M.Naveen
for M/s.K.P.Jotheeswaran

For Respondents : Mr.S.Sounthar (for R1)

R2 – Died

ORDER

The petitioners have filed this Civil Revision Petition to set aside the set aside the order dated 27.04.2006 made in I.A.No.169 of 2004 in O.S.No.(unnumbered) of 2004 on the file of the Court of the Additional District Judge, Pondicherry at Karaikal.

2.It is the case of the revision petitioners that the respondents

herein as plaintiffs were filed a suit against the revision petitioners in O.S.No.61 of 1996 on the file of the learned Principal District Munsif at Karaikal for declaration, recovery of possession, recovery of mesne profits at the rate of Rs.100/- per month and permanent injunction with respect of 'B' schedule property.

3.After completion of the trial in the above suit, the Learned District Munsif by order and decree dated 30.10.2000 held that the plaint is ordered to be returned to the plaintiff/respondent herein with a direction to present it before the proper court after paying the deficit Court fees under Section 25(a) of the Pondicherry Court Fees and Suit Valuation Act on or before 22.12.2000. However, the respondent herein without presenting the plaint before the proper Court, has filed an appeal in C.M.A.No.63 of 2001 before the learned Additional District Judge at Karaikal as against the judgment and decree mentioned Supra.

4.The learned Additional District Judge by order dated 18.02.2002 has dismissed the above appeal by confirming the decree and judgment of the learned Principal District Munsif at Karaikal, dated 30.10.2000.

5. Thereafter, the respondent herein has not chosen to present the plaint returned above to the proper Court, but filed the present suit on 23.04.2004 on the same cause of action before the learned Additional District Judge, Pondicherry at Karaikal against the revision petitioners. Before numbering the above suit, the revision petitioners filed an application in I.A.No.169 of 2004 under Order 7 Rule 11 of the Code of Civil Procedure with a prayer to reject the plaint on the ground that the suit is hit by under Order 2, Rule 2 of the Code of Civil Procedure and there is no cause of action for the same and the suit is also barred by limitation.

6. Per contra, the respondent herein filed counter affidavit stating that there is no direction by the Learned Additional District Judge to represent the suit within a stipulated period. It is further contended by the respondent that the present suit will not attract Order 2, Rule 2 of C.P.C and the same could be decided only after conducting trial. Further the question of limitation does not arise while invoking Order 7, Rule 11 of C.P.C as the same is a mixed question of law and fact. Therefore the Order 7 Rule 11 C.P.C will have no application in the unnumbered suit. Hence the question of rejection of plaint as per

Order 7, Rule 11 of Code of Civil Procedure is not available to the revision petitioners.

7.After considering the rival submission on either side, the Learned Additional District Judge was pleased to close the I.A.No.169 of 2004 as the application is in premature stage. Further the Lower Court directed the registry to number the suit, if the plaint is otherwise in order. Questioning the same the present Civil Revision Petition is filed.

8.I heard Mr.T.M.Naveen for M/s.K.P.Jotheeswaran, learned counsel appearing for the petitioners and Mr.S.Sounthar, learned counsel appearing for the 1st respondent and perused the entire records.

9.It is seen from the records that the respondent herein earlier filed a suit against the revision petitioners in O.S.No.61 of 1996 before the learned Principal District Munsif Court at Karaikal and the same was dismissed with a direction to the respondent herein/ plaintiff to present the plaint before the proper Court after paying the deficit Court fees on or before 22.12.2000. Aggrieved over the same, the

respondent herein filed appeal in C.M.A.No.63 of 2001 before the learned Additional District Judge at Karaikal and the same was also dismissed. Thereafter, the respondent herein filed the present suit for the very same relief as claimed in O.S.No.61 of 1996 against the revision petitioners on 28.04.2004. Before numbering the suit, the petitioners took out an application in I.A.No.169 of 2004 to reject the plaint under Order 7 Rule 11 of C.P.C. The respondent herein filed detailed counter affidavit to the above said application. The Learned trial Judge has closed the said application as it is in premature stage.

10.The learned counsel for the revision petitioners argued that the application under Order 7 Rule 11 of the Code of Civil Procedure is maintainable even before numbering the plaint. In support of their contention, the Learned counsel for the revision petitioners would draw the attention of this Hon'ble Court to the Judgment of the Hon'ble Apex Court in the case of ***Church of Christ Charitable Trust and Educational Charitable Society Represented by its Chairman v. Ponniamman Educational Trust, Represented by its Chairperson/Managing Trustee*** reported in ***(2012) 8 Supreme Court Cases 706***, wherein it is held that the power under Order 7 Rule 11 of the Code of Civil Procedure can be exercised at any stage of

the suit either before registering the plaint or after the issuance of the summons to the defendant or at any time before the conclusion of the trial. From the above, it is made clear that the revision petitioners are having right to file an application at any stage of the suit. Therefore the application filed by the revision petitioners under Order 7 Rule 11 of the Code of Civil Procedure is maintainable in Law.

11.However, this Court by considering the scope of application filed by the revision petitioners under Order 7 Rule 11 of C.P.C on the ground of limitation is not maintainable at present, as the question of limitation is a mixed question of Law and fact. The trial Court has dismissed the above application only on the ground that the application is too premature and the same is not called for any interference by this Court. Therefore in the considered opinion of this Court and also the facts and circumstances of the present case on hand, the Civil Revision Petition fails and the same is liable to be dismissed, accordingly it is dismissed.

12.In the result:

(a) the Civil Revision Petition is dismissed, by confirming the order passed in I.A.No.169 of 2004 in

O.S.No.(unnumbered) of 2004, dated 27.04.2006, on the file of the Additional District Judge, Pondicherry at Karaikal;

(b) the trial Court viz. the Additional District Judge, Pondicherry at Karaikal is directed to number the suit and dispose of the same, by issuing summon to the defendant on merit within a period of three months from the date of receipt of a copy of this order. Before deciding the issue, the petitioners/defendants are at liberty to file an application under Order 7 Rule 11 of the Code of Civil Procedure for rejecting the plaint, on the ground of limitation;

(c) the learned Judge is directed to consider the application, if any filed by the petitioners and pass orders before deciding the suit. Consequently, connected miscellaneous petition is closed.

27.02.2017

Note: Issue order copy on 12.09.2017.

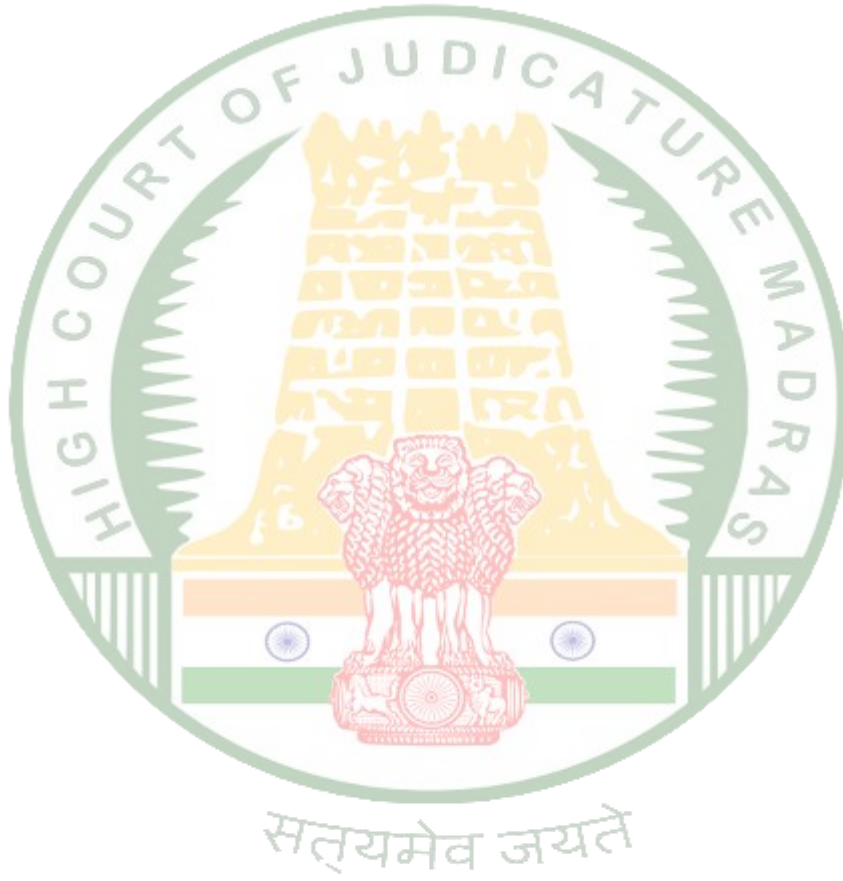
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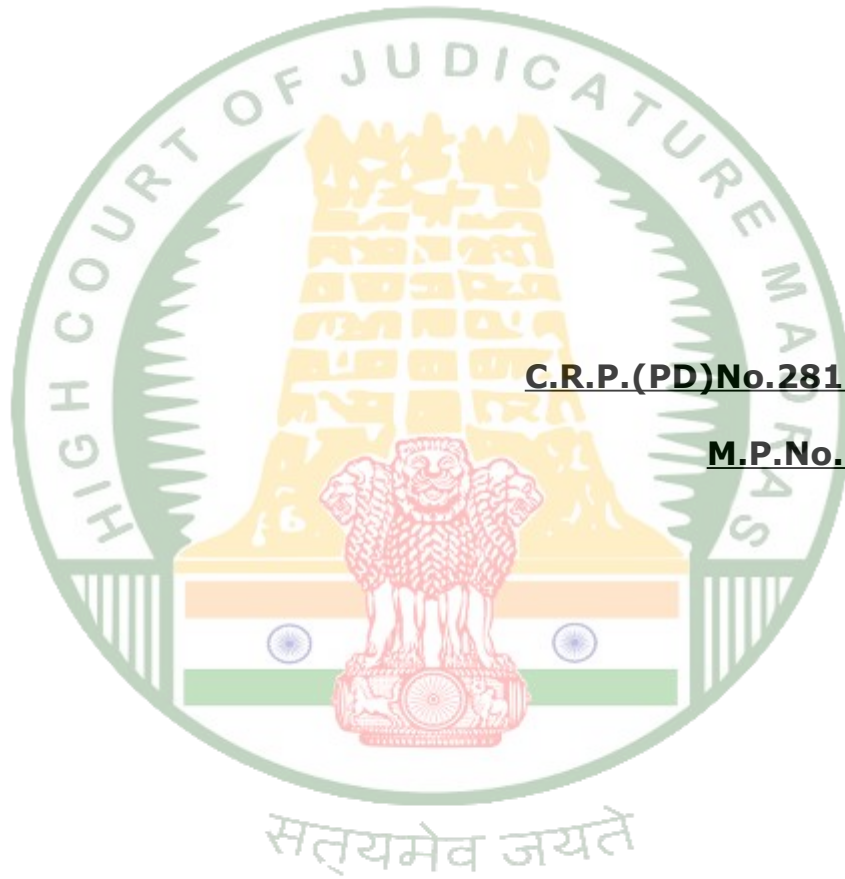
The Additional District Judge,
Pondicherry at Karaikal.



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M.V.MURALIDARAN.J.,

VS



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