

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

O.S.A.No.192 of 2016

Mr.Raja Sikandar
Rep. By his Power of Attorney Agent
N.Basheer Ahmed. Appellant/1st Respondent

Vs.

1. D.Srinivasan
2. D.Krishna Kumar
3. D.Sankar
4. D.Raja
5. D.Sakunthala
6. Lakshmi
7. Meenatchi
8. Kasthuri
9. Vijaya

- 10.Sree Varadaraja Benefit Fund Ltd.,
Rep. By its Managing Director,
No.63/1, New No.149/1,
Purasaiwakkam High Road,
Chennai - 600 009. Respondents/Applicants
1 to 9 & 2nd Respondent

Appeal filed under Order XXXVI Rule 9 of O.S.Rules read with Clauses 15 of the Letters Patent against the order dated 17.11.2014 made in A.No.2917 of 2014 in C.S.No.358 of 2013 on the file of this Court.

For Appellant : Mr.CKM.Appaji

For Respondents : Mr.V.Ayyadurai, Senior Counsel
for Mr.S.Manogar for R1 to R9
No Appearance for R10

JUDGMENT

[Judgment of the Court was made by RAJIV SHAKDHER, J.]

1. This is an appeal preferred against the judgment and order dated 17.11.2014 passed by the learned single Judge.

1.1. By virtue of the impugned judgment and order, the learned single Judge disposed of two applications being: A.Nos.2916 and 2917 of 2014.

2. Insofar as application No.2916 of 2014 was concerned, the respondents had sought a stay of C.S.No.358 of 2013, (which is instituted in this Court), under Section 10 of the Code of Civil Procedure, 1908 (in short 'CPC')

2.1. A.No.2917 of 2014 was filed by the respondents under Order VII Rule 1 of C.P.C. By this application, the prayer made, was, to reject the plaint in C.S.No.358 of 2013.

3. The learned single Judge, by virtue of the impugned judgment and order, has dismissed the Application No.2916 of 2014, while allowing the other application i.e., A.No.2917 of 2014.

4. The record shows that respondents at a prior point in time had filed a suit, being O.S.No.7533 of 2010 before XIX Additional City Civil Court, Chennai.

5. The appellant being aggrieved by the direction contained in the impugned judgment and order, whereby his plaint in C.S.No.358 of 2013 stands rejected, has preferred the instant appeal.

6. Pertinently, after some arguments counsels for both parties, agreed that the present appeal could be disposed bearing in mind, the following :

(i) The impugned judgment and order dated 17.11.2014 should be set aside, since, there are triable issues, which arise for adjudication in C.S.No.358 of 2013.

(ii) The other suit being O.S.No.7533 of 2010 on the file of XIX Additional City Civil Court, Chennai, should be withdrawn to this Court and tried along with C.S.358 of 2013 pending in this Court.

6.1. Having perused the record, we are also of the view that C.S.No.358 of 2013, raises triable issues. Since, counsels are ad-idem on this aspect, nothing further need be said, as any further observation could impact the merits of the matter. Furthermore, to facilitate adjudication of disputes, inter se parties, in our view and as agreed by counsels, O.S.No.7533 of 2010 should be withdrawn to this Court for further adjudication.

6.2. Resultantly, the impugned judgment and order dated 17.11.2014 is set aside. The suit, being O.S.No.7533 of 2010 pending adjudication before XIX Additional City Civil Court, Chennai, shall stand withdrawn to this Court and tried along with C.S.No.358 of 2013.

7. The appeal is disposed of in the aforesaid terms. There shall, however, be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsm

To

1.The Judge,
XIX Additional City Civil Court,
Chennai.

2.The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+1cc to Mr.CKM.Appaji, Advocate, S.R.No.56942

O.S.A.No.192 of 2016

BR(CO)
CA(06/09/2017)

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