



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.37 of 2017 (NPD)
and
C.M.P(MD)No.200 of 2017 (PD)

Ramasamy .. Petitioner/ Petitioner/ Plaintiff

Vs.

Meenal (died)

1.Sekar
2.Alagammal
3.Rathinam
4.Sangeetha
5.Sathish

.. Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to prefer this Memorandum of Civil Revision Petition against the fair and decreetal order passed in I.A.No.729 of 2016 in O.S.No.136 of 2011 on the file of the District Munsif Court, Sivagangai, dated 05.11.2016.

For Petitioner : Mr. J.John

ORDER

The petitioner has filed this Civil Revision Petition against the fair and decreetal order passed in I.A.No.729 of 2016 in O.S.No.136 of 2011 on the file of the District Munsif Court, Sivagangai, dated 05.11.2016.

2. The petitioner is the plaintiff. The petitioner filed suit in O.S.No.136 of 2011 on the file of the District Munsif Court, Sivagangai for declaration and injunction. The respondents filed written statement along with counter claim. The petitioner filed I.A.No.729 of 2016 to reject the counter claim, on the ground that the same is barred by limitation.

3. The learned counsel appearing for the petitioner submitted that earlier mother of the first respondent filed I.A.No.568 of 2007 in O.S.No.178 of 2006 to withdraw the suit with liberty to file fresh suit. The said Interlocutory Application was allowed on 20.09.2008 she did not file any suit within three years from the date of order. Therefore, the counter claim filed in the present suit is barred by limitation. The petitioner filed an application only after commencement of the trial and completion of evidence and after five years of filing of counter claim.



4. The respondents filed counter and submitted that after order permitting the first respondent's mother to withdraw the earlier suit and file fresh suit, proceedings were initiated before the District Revenue Officer and property was sub divided and separate patta was issued in the name of the first petitioner's mother. In the circumstances, there is no necessity arose to file suit. The petitioner suppressed the material fact and on false allegations filed the suit. Therefore, the respondent has filed written statement along with counter claim.

5. The learned Judge considering the averments made in the affidavit and counter affidavit dismissed the application on the ground that question of limitation is mixed question of law which can be decided only after trial by appreciating the oral and documentary evidence let in by the parties.

6. Against that order, present Civil Revision Petition has been filed.

7. The learned counsel appearing for the petitioner submitted that the learned Judge failed to see that counter claim is barred by limitation on the facts of the case and no evidence is required to decide the issue of limitation and prayed for allowing the Civil Revision Petition.

8. I have heard the learned counsel appearing for the petitioner and perused the materials available on record.

9. From the materials available on record it is seen that the petitioner filed suit for declaration and injunction. The respondent filed written statement along with counter claim. The petitioner filed application after five years of filing counter claim and after commencement of trial and completion of evidence to reject the counter claim.

10. The respondent has given reason for filing of the counter claim made by her. Whether such counter claim is maintainable or barred by limitation can be decided only by letting in evidence by the parties. Further, the rejection of the plaint or counter claim can be decided only based on the averments made by the parties.

11. The contention of the opposite party cannot be taken into consideration while deciding the application to reject the plaint or counter claim. The learned Judge has rightly held that question of limitation is mixed question of law and fact which can be decided only by appreciating the evidence let in by the parties. In the circumstances there is no illegality or irregularity in the order passed by the Court below warranting interference by this Court.

12. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)



To
The District Munsif Court, Sivagangai

copy to
The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1 cc to Mr.J.John, Advocate, SR.NO:2036

trp
sva/bs/27.02.2017/3p/4c

C.R.P (MD) No.37 of 2017 (NPD)
and
M.P (MD) No.200 of 2017 (PD)
10.01.2017