

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.R.P.(PD).No.679 of 2013
and
M.P.No.1 of 2013

1.T.N.Sivadevan
2.T.S.Vishnu

.. Petitioners

..Vs..

1.S.Balasaraswathi
2.P.Parvadhavarthini
3.Dr.T.N.Malayappasamy
4.T.N.Sivasubramaniam

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order of the II Additional Subordinate Judge's Court at Erode, dated 05.01.2013 in I.A.No.395 of 2012 in O.S.No.251 of 2007.

For Petitioners

: Mr.P.Valliappan

For Respondent 1

: Mr.S.Thangavel

For Respondents 2 to 4 : No appearance

ORDER

The instant Civil Revision Petition has been filed challenging the dismissal of amendment application filed by the plaintiff in the suit O.S.No.251 of 2007.

2. The learned counsel for the first respondent brought to the notice of this Court that subsequent to the dismissal of I.A.No.395 of 2012 on 05.01.2013, the suit was disposed of on 07.12.2016 by the IInd Additional Subordinate Judge, Erode in O.S.No.251 of 2007. It was also brought to the notice of this Court that the said Judgement dated 07.12.2016 was challenged by the petitioners in A.S.No.14 of 2017 before the learned Principal District Judge, Erode, which was also dismissed on 04.09.2018. In such circumstances, the learned counsel for the first respondent submits that the Civil Revision Petition has now become infructuous.

3. Per contra learned counsel for the petitioners would submit that the dismissal of the instant Civil Revision Petition on the ground that it has become infructuous will affect the petitioners in the Second Appeal,

if any filed by the petitioners in the near future. Therefore, he seeks

direction of this Court that the petitioners may be permitted to raise the grounds raised in this revision petition in the Second Appeal, if any filed by the petitioners in the near future, against the Judgment dated 04.09.2018 passed by the learned Principal District Judge, Erode in A.S.No.14 of 2007.

4. The suit filed by the petitioners against the respondents is a partition suit. The amendment sought for by the petitioners in I.A.No.395 of 2012 before the Trial Court pertains to description of properties and amendment of cause of action paragraphs in the plaint. The suit itself was disposed of on 07.12.2016 after passing of the impugned order and an appeal was also filed by the petitioners, aggrieved by the disposal of the suit in A.S.No.14 of 2017 before the learned Principal District Judge, Erode, which also came to be dismissed on 04.09.2018.

5. This Court is of the considered view that the instant Civil Revision Petition has now become infructuous, in view of the disposal of the suit and as continuation of the same, the appeal filed by the petitioners has also been disposed of by the Trial Court on 04.09.2018 in

ABDUL QUDDHOSE, J.

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A.S.No.14 of 2017. However, if the petitioners in the Appeal A.S.No.14 of 2017 had raised the rejection of amendment application in I.A.No.395 of 2012 in O.S.No.251 of 2007 to be erroneous, they are always at liberty to raise the same ground in the Second Appeal, which they proposed to file in the near future. The dismissal of Civil Revision Petition as infructuous will not have any bearing and does not bar the petitioners to raise whatever ground available to them under law in the Second Appeal.

6. With the above directions, the instant Civil Revision Petition is dismissed as infructuous. Consequently, connected miscellaneous petition is closed. No costs.

सत्यमेव जयते

26.11.2018

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Index:Yes/No

Internet:Yes/No

Speaking/Non-Speaking orders

To

The IInd Additional Subordinate Court, Erode

<http://www.judis.nic.in>

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