

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2018

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

Civil Revision Petition (PD) No.56 of 2018

S.Ravi

... Petitioner

..Vs..

1.S.Malar Rani
2.G.Suseelarani
3.Sridevi

... Respondents

Prayer: This Civil Revision Petition has been filed under Article 227 of Constitution of India, against the fair and decretal order passed in I.A.No.789 of 2015 in O.S.No.1242 of 2013, dated 22.03.2017, on the file of the I Addl.Subordinate Judge, Coimbatore.

For petitioner : Mr.C.Veeraraghavan

ORDER

Challenging the fair and decretal order passed by the I Addl.Subordinate Judge, Coimbatore in I.A.No.789 of 2015 in O.S.No.1242 of 2013, dated 22.03.2017, the present revision petition has been filed.

2. According to the petitioner, the respondent has filed a suit in O.S.No.1242 of 2013, praying for declaration, to declare that he is the absolute owner of the suit property on the ground of adverse possession and also raised a plea that the respondent entered into a oral sale agreement dated 10.09.1999 with respect to the suit property against the petitioner/1st defendant and also to declare the sale agreement dated 13.12.2012 executed by the petitioner in favour of 2nd and 3rd respondent as null and void. According to the petitioner, in the aforesaid suit, the petitioner has filed an application in I.A.No.789 of 2015 under order 7 Rule 11 of C.P.C. The petitioner is in possession and enjoyment of the suit property and the claim of the adverse possession by the respondent is not sustainable in law, therefore, the petitioner cannot seek declaration by way of adverse possession.

3. The respondent has filed a counter statement before the Court below by stating that the plaintiff satisfied all the conditions to claim adverse possession. Therefore, the said dispute can be decided only at the time of trial in the suit. The Court below, after considering the pleadings of both the parties, dismissed the said application filed by the petitioner, challenging the said order, the present civil revision petition before this Court.

4. The learned counsel for the petitioner, would submit that, in the light of the decision of the supreme Court, the first respondent/plaintiff cannot claim declaration of ownership by adverse possession and hence the said suit filed by the first respondent is liable to be rejected.

5. Considering the above facts and circumstances made by the learned counsel for the petitioner, the contention of the petitioner, the plea of adverse possession raised by the plaintiff in the application is a relief of declaration, cannot be granted, therefore, in the light of the judgment of the Hon'ble Supreme Court reported in (2014)1 SCC 669 (Gurdwara Sahib Vs.Gram Panchayat Village Sirthala and another, the said suit filed by the first respondent is liable to be rejected. It is relevant to refer provision under Order 7 Rule 11 C.P.C as reads as follows:-

R.11. Rejection of Plaint - The plaint shall be rejected in the following cases:-

a)where it does not disclose a cause of action;

b)where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

c)where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

d)where the suit appears from the statement in the plaint to be barred by any law;

e)where it is not filed in duplicate

f)where the plaintiff to comply with the provisions of Rule 9.

6. From the aforesaid provisions under Order 7 Rule 11 CPC and that no counter has been filed by the respondent in the application, for declaration claiming adverse possession is a disputed fact, which can be decided by the adducing oral and documentary evidence upon the decision of the Supreme Court in (2014)1 SCC 669 (Gurdwara Sahib Vs.Gram Panchayat Village Sirthala and another) has held as follows:-

"Insofar as the first issue is concerned, it was decided in favour of the plaintiff returning the findings that the appellant was in adverse possession of the suit property since 13.04.1952 as this fact had been proved by a plethora of documentary evidence produced by the appellant. However, while deciding the second issue, the Court opined that no declaration can be sought on the basis of adverse possession inasmuch as adverse possession can be used as a shield and not as a sword."

7. The aforesaid judgment, the issues was decided after contest in the suit. The present case on hand, at this stage, application cannot be decided, without considering, the detail examination of the parties and materials to be adduced at the time of trial in the suit. Therefore, there is no irregularity or illegality in the order passed by the trial Court and the same is confirmed.

8. In the result, the Civil Revision Petition stands dismissed. No order as to costs. At this stage, the learned counsel for the petitioner seeks early disposal of the suit. The trial Court is directed to dispose the case as early as possible, preferably, within a period of six months from the date of receipt of a copy of this order.

30.01.2018

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To

The I Addl.Subordinate Judge, Coimbatore.

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D.KRISHNAKUMAR, J.,

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