



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (MD) No.2202 of 2017 (NPD)
and
CMP (MD) Nos.10800 & 10801 of 2017

K.Retnam

... Petitioner

Vs.

1.Mohanan

2.Jeyalakshmi

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the plaint in O.S No.126 of 2015 and consequently set aside the decree dated 11.02.2016 on the file of the I Additional District Judge, Tirunelveli as abuse of process of the court.

For Petitioner: Mr.G.Prabhu Rajadurai

For Respondent: Mr.N.Anantha Padmanabhan
for APN Law Associates

ORDER

This Civil Revision Petition has been filed for striking off the plaint in O.S No.126 of 2015 on the file of the I Additional District Judge, Tirunelveli and for setting aside the decree dated 11.02.2016 passed therein.

2.When the matter was taken up for hearing, the learned counsel appearing for the respondents submitted that nothing survives for adjudication in this revision petition as the decree sought to be set aside has already been recalled by the court below.

3.The learned counsel appearing for the revision petitioner however submitted that the prayer in this civil revision petition is in two parts. The first one is for striking off the plaint. Of course, there is a prayer for setting aside the decree dated 11.02.2016. This civil revision petition has become infructuous only in respect of the second part. The suit is remaining on file. Therefore, he submitted that this civil



revision petition has not become infructuous and that it should be heard on merits.

4.The learned counsel for the petitioner produced a copy of the order dated 11.12.2017 passed by the learned Trial Judge suo motu reviewing and recalling the order dated 11.02.2016. It is an elaborate order passed after examining the counsel on either side. Finding has been given that fraud was played on the court. It is admitted by the respondents that this order has not been questioned till date. It has thus become final. If the plaintiff has been found to have played fraud on the court, the court below ought to have non suited him then and there. The question of restoring the suit to its file does not arise. The learned trial Judge should not have stopped with recalling the decree alone. He should have gone further and throw out the plaint itself.

5.The reasons given by the court below in the order dated 11.12.2017 in O.S No.126 of 2015 are detailed and sound. For those very reasons, this Court directs the court below to strike off the plaint in O.S No.126 of 2015. Accordingly, this civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS-IV)

To

1.The I Additional District Judge,
Tirunelveli.

+ 1 CC TO MR.G.PRABHU RAJADURAI, ADVOCATE IN SR NO.86124

SKM

BU/SV/SAR-IV : 01.10.2018 : 2P/3C

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