



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (MD)No.2511 of 2017 (PD)
and
CMP(MD)No.11801 of 2017

S.Jeyabalan ... Petitioner/ Petitioner/Defendant
Vs.

1.G.Umamaheswari
2.Minor G.Varsha Sri ... Respondents/Respondents/Plaintiffs
(rep.by her mother,
the first respondent)

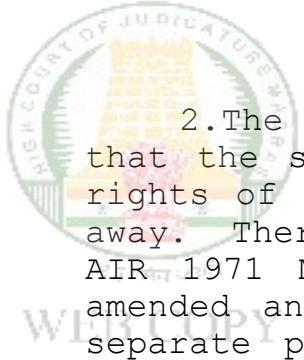
Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.566 of 2016 in O.S.No.37 of 2013 dated 20.04.2017 on the file of the Sub Court, Aruppukkottai, and allow this Revision with costs through.

For Petitioner : Mr.K.Samidurai

For Respondent : Mr.S.Natarajan

ORDER

The respondents herein filed O.S.No.37 of 2013 before the Sub Court, Aruppukkottai seeking the relief of maintenance against the husband of the first plaintiff V.K.S.Ganeshan. It was not only a suit for maintenance but also for creating a charge over the suit property. During the pendency of the said suit, Thiru.V.K.S.Ganeshan appeared to have entered into a sale agreement with the revision petitioner herein namely, Jeyabalan. The revision petitioner had also filed a suit for specific performance against V.K.S.Ganesan and obtained a exparte decree. V.K.S.Ganesan died in the year 2015. Even during the life time of V.K.S.Ganeshan, Jeyabalan was brought on record as the second defendant. Subsequently, the suit prayer was amended and the sale made by the V.K.S.Ganeshan in favour of the Jeyabalan was also impeached. At that stage, the revision petitioner filed I.A.No.566 of 2016 for rejection of plaint. The said application was dismissed by the court below by order dated 20.04.2017. The correctness of the order is assailed in this Civil Revision Petition.



2.The learned counsel for the revision petitioner pointed out that the suit was originally filed only for enforcing maintenance rights of the plaintiffs. The original defendant had since passed away. Therefore, in view of the decision of this Court reported in AIR 1971 Madras 469 (Velammal v. C.Gounder), the plaint can be amended and the plaintiffs can seek the relief of partition and separate possession of the share. In this case, the revision petitioner pointed out that such a suit had actually been filed separately in O.S.No.24 of 2013 on the file of the Principal District Judge, Srivilliputhur.

3.The learned counsel for the revision petitioner pointed out that the prayers now projected in the present suit namely O.S.No.37 of 2013 on the file of the Sub court, Aruppukottai can be incorporated in the said partition suit itself. He submitted that he would not oppose the application for amendment of the prayers in the said partition suit.

4.This Court is unable to agree with the said submission. As rightly pointed out by the learned counsel appearing for the respondents, the cause of action is quite separate and independent. The prayer in O.S.No.37 of 2013 on the file of the Sub Court, Aruppukottai is now for declaring that the sale deed dated 30.05.2013 executed in favour of the revision petitioner is not valid or binding on the present plaintiffs.

5.This Court is of the view that the scope of OS.No.37 of 2013 on the file of the Sub Court, Aruppukottai is quit distinct from O.S.No.24 of 2013 pending before the Principal District Judge, Srivilliputhur. Therefore, the present suit cannot be sought to be rejected by citing the filing of other suit. The only question that this Court must pose is if there was a valid cause of action for filing the suit. Once it is seen that there was a valid cause of action for filing the suit, this Court cannot non suit the plaintiffs by rejecting the plaint by referring to the other circumstances. The court below was right in dismissing the I.A.

6.One suit is before the District Court and other is before the Sub Court. The parties are one and the same and both the cases can very well be jointly tried in the same Court. It is not in dispute that the suit schedule property in OS.No.37 of 2013 forms part of the suit schedule in O.S.No.24 of 2013 and therefore, in the fitness of things, both the cases can very well be jointly tried. O.S.No.37 of 2013 on the file of the Sub Court, Aruppukottai is withdrawn and transferred to the file of the Principal District Court, Virudhunagar @ Srivilliputhur to be tried jointly along with O.S.No.24 of 2013. It is submitted that the said suit has been transferred to Virudhunagar and that new number is yet to be assigned. Be that as it may, both the cases shall be jointly tried as stated above.



7. With this direction, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RECORDS)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Principal District Judge,
Principal District Court,
Virudhunagar @ Srivilliputhur.

2. The Subordinate Judge,
Sub Court,
Aruppukottai.

+1CC TO MR.K.SAMIDURAI ADVOCATE IN SR.NO.77851.

+1CC TO MR.S.NATARAJAN, ADVOCATE IN SR.NO.77883.

SKM

DS SKN SAR-2;07.09.2018; 3P/5C

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