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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
CRP(MD)No.2113 of 2018 (PD)

and

CMP(MD).9340 of 2018

1.Kumaresan

2.Kurunjikumaran

3.Vellaiyan

4.Manthakalai

5.Alagusundaram

... Petitioners

Vs.

1.K.Kumar

2.P.Manthaiyan

3.V.Periyampillai

4.M.Perumal

5.V.Perumal

6.K.Karuppaiah

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 17.09.2018 made in I.A No.887 of 2018 in O.S No.143 of 2018 on the file of the District Munsif Court, Melur.

For Petitioners : Mr.R.Vijayakumar
For Respondents : Mr.S.M.A.Jinnah

ORDER

The contesting defendants in O.S No.143 of 2018 on the file of the District Munsif, Melur are the revision petitioners herein. The suit has been instituted for declaring that the plaintiff is entitled to certain honours and for consequential injunction. The revision petitioners had filed an I.A under Order 7 Rule 11 of CPC for rejection of plaint. The said I.A was dismissed. Thereafter, the court below had taken I.A No.887 of 2018 filed by the plaintiff for temporary injunction and allowed the same by order dated 17.09.2018. The correctness of the said order is challenged in this civil revision petition.

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2.Heard the learned counsel on either side.



3.The learned counsel appearing for the revision petitioners submitted that what was argued by them was only the I.A filed under Order 7 Rule 11 of CPC and that they did not advance their arguments in I.A No.887 of 2018. The learned counsel appearing for the plaintiff controverted this assertion and submitted that arguments were advanced on either side in I.A No.887 of 2018.

4.This Court however cannot accept the said submission made by the learned counsel appearing for the respondents. It is for the simple reason that the order passed by a court as to what transpired in the court is conclusive and cannot be controverted. In this case, the impugned order itself reads that no arguments were advanced by the revision petitioners herein in I.A No.887 of 2018. Therefore, the submission made by the revision petitioners is supported by the recitals found in the impugned order itself.

5.In this view of the matter, the order impugned in this civil revision petition is set aside. Normally, this Court would have remitted the matter to the file of the court below. But then, the learned counsel appearing for the plaintiff submitted that the court below can be directed to dispose of the main suit itself. Shri.R.Vijayakumar, the learned counsel for the revision petitioners submits that they are contemplating to file an appeal against the order made in the petition filed under Order 7 Rule 11 of CPC. This Court does not propose to take away the said right of the revision petitioners. Without prejudice to the same, this Court directs the court below to dispose of the suit in O.S No.143 of 2018 on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order.

6.This civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar (Crl Side)

/True copy/

Sub Assistant Registrar(CS-I)

To

The District Munsif, Melur.

+1cc to Mr.R.VIJAYAKUMAR, Advocate, SR.No. 86108

+1cc to Mr.S.M.A.JINNAH, Advocate, SR.No. 86152

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SKM

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