

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved On : 08.06.2018
Orders Pronounced On : 17.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRP.No.1386 of 2018

P.Selvaraj ... Petitioner/Plaintiff

Vs

1.A.Rajendiran
2.K.S.Samuel
3.Y.Godwin
4.BYM. Sudha Kumar
5.M.Thanga Prakasam
6.M.Walter Amala Doss
7.M.Ebinezar Jacob Solomon
8.M.Joseph
9.S.Zion Nathaniel
10.S.Joe Sathiyakumar
11.RM.Joseph
12.J.Selvaraj
13.S.Soloman Kishore
14.S.Ebinezar
15.C.Ravichandran
16.John Henry Devarasan
17.J.Yobu

... Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the suit in I.A.No.29 of 2017 in O.S.No.17 of 2016 on the file of the Principal District Munsif, Ambur, dated 16.02.2018 on the consequential review application filed to review the suit on the ground of error apparent on the face of records in contrary to law.

For Petitioner : Mr.V.Ragavachari

For Respondent : Notice served - (No Appearance)

WEB COPY
O R D E R

The revision petitioner herein is the petitioner in I.A.No.29 of 2017 and Plaintiff in O.S.No.17 of 2016 on the file of the learned District Munsif, Ambur. The respondents herein are the respondents in the above said I.A.No.29 of 2017 and the defendants in the above said suit.

2 The petitioner filed a suit against the respondents in O.S.No.17 of 2016 on the file of the Principal District Munsif Court, Ambur, for declaration and permanent injunction. The petitioner is the Chief Arbitrator of the Church in Ambur, and there is peaceful administration of the Church from the beginning and plaintiff also prayed to declare that the petitioner is the Chief Arbitrator of the Church in Ambur, and for consequential relief of permanent injunction restraining the respondents to interfere with the peaceful administration of the plaintiff and smooth functioning of the Church and also for permanent injunction restraining the defendants from interfering with the peaceful appointment of the new office bearers for the suit Church.

3 After service of suit summons, the respondents entered appearance and filed a written statement. During the pendency of the suit, the respondents filed a petition in I.A.No.430 of 2016 to reject the plaint under Order VII rule 11(a) C.P.C., and that petition was allowed by the learned Principal District Munsif, Ambur. The suit in O.S.No.17 of 2016 was rejected stating that the suit, on the very same cause of action, cannot survive in the absence of leave of the Court to file a fresh suit. Against that order, the petitioner filed a review application in I.A.No.29 of 2017 under Order 47 Rule 1 and 3 and Section 114 and 151 of C.P.C., to review the order passed in I.A.No.430 of 2016 dated 04.01.2017 before the learned Principal District Munsif, Ambur. The learned Principal District Munsif, Ambur, after hearing both the parties, dismissed the said review application on the ground that there is no error apparent on the face of the record. Challenging the said order passed in the review application, the plaintiff has filed the present Revision Petition before this Court.

4 The learned counsel for the petitioner would submit that the revision petitioner originally filed a suit in O.S.No.12 of 2016 on the file of the Principal District Munsif, Ambur. The said suit was dismissed on 15.02.2016 as not pressed. The revision petitioner filed the present suit in O.S.No.17 of 2016. Pending the present suit, the respondents have filed the petition to reject the plaint in I.A.No.430 of 2016 and the same was allowed without considering the fact that the cause of action that arose in O.S.No.12 of 2016 is entirely different from the cause of action that arises in O.S.No.17 of 2016. There is no impediment to file a fresh suit, when the fresh cause of action arises. The learned Principal District Munsif allowed the petition filed under Order VII Rule 11(a) C.P.C., and rejected the plaint only on the ground that the original suit was dismissed as not pressed. Even without getting a leave of the Court to file a fresh suit on the same cause of action, the

subsequent suit filed in O.S.No.17 of 2016 is not maintainable, and therefore it was rejected. Since the learned District Munsif failed to consider the legal position, the revision petitioner filed an application for review in I.A.No.29 of 2017 to review the order passed in I.A.No.430 of 2016 by the learned District Munsif, Ambur. The learned District Munsif failed to consider the legal position and dismissed the petition in I.A.No.29 of 2017. Therefore, the plaintiff has preferred the present Civil Revision Petition before this Court, and the order passed by the learned District Munsif warrants interference.

5 The learned counsel for the respondents would submit that the revision petitioner originally filed a suit for the same cause of action in O.S.No.12 of 2016 for declaration and permanent injunction. Subsequently, the said suit was dismissed as not pressed on 15.02.2016. Thereafter, the petitioner filed a suit in O.S.No.17 of 2016 for the same relief. Therefore, without getting any leave or permission from the Court, filing the second suit on the same cause of action, is not maintainable. Hence, the respondents filed a petition before the learned District Munsif, Ambur, in I.A.No.430 of 2016 to reject the plaint. The learned District Munsif, Ambur, considering all the facts and circumstances of the case, allowed the application for rejection of plaint and thereby the plaint was rejected. The petitioner, if at all is aggrieved by the said order, should have filed an appeal, since the order passed under Order VII Rule 11(a) C.P.C., is appealable. Without filing an appeal, the petitioner has filed the review application in I.A.No.29 of 2017. The learned District Munsif, Ambur, rightly dismissed the petition on the ground that there is no error apparent on the face of the record, against which, he has filed this Civil Revision Petition, which does not warrant interference by this Court.

6 Heard the learned counsel for the petitioner as well as the learned counsel for the respondents and perused the materials available on record.

7 Admittedly, the revision petitioner/plaintiff originally filed a suit in O.S.No.12 of 2016 for declaration and permanent injunction to declare him as a Chief Arbitrator of the Church in Ambur, and this suit was dismissed as not pressed on 15.02.2016. Subsequently, the revision petitioner filed another suit on the same subject matter in O.S.No.17 of 2016 on 17.02.2016 for declaring him as the Chief Arbitrator of the Church in Ambur. During the pendency of the suit in O.S.No.17 of 2016 the respondents herein filed a petition under Order VII Rule 11 (a) C.P.C., for rejection of the plaint on the ground that in both the suits, the cause of action is one and the same and the petitioner withdrew the earlier suit without getting the

leave of the Court and further, the petitioner has not pleaded about the previous suit in O.S.No.12 of 2016.

8 Therefore, after hearing both the parties, the trial Court allowed the petition for rejection of the plaint and thereby rejected the plaint. Though, the order of rejection of plaint passed by the learned District Munsif, Ambur, is a decree, and if the petitioner is aggrieved by the same, he could have filed an appeal before the appellate Court. Whereas, in this case, the petitioner has filed an application under Order 47 Rules 1 and 3 C.P.C., and Sections 114 and 151 of C.P.C, in I.A.No.29 of 2017 to review the order passed by the learned District Munsif, Ambur, which was dismissed. As stated earlier, the respondents filed a petition to reject the plaint and the Court rejected the plaint. Challenging the same, the petitioner should have filed an appeal before the appellate Court to establish that the cause of action for both the suits is not one and the same and it is different. Therefore, the leave of the Court is not necessary. So, without filing any appeal, he filed the review application, though the Court dismissed the I.A., filed for review on the ground that there is no error apparent on the face of record.

9 Therefore, on a reading of the entire order passed by the Court below, this Court finds that there is no error apparent on the face of the record. The petitioner should have filed an appeal before the appellate Court, challenging the order passed by the learned Principal District Munsif, Ambur for rejection of plaint.

10 Therefore, this Court does not find any merit in the Civil Revision Petition. Accordingly, the present Civil Revision Petition is dismissed. No costs.

s/d-

Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

sbn

To

1.The Principal District Munsif

Ambur

+1 CC to Mr.V.Ragavachari, Advocate sr 49215.

CRP.No.1386 of 2018

CNR (CO)

SP(18/07/2019)