

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Civil Revision Petition No.2914 of 2019
and C.M.P.No.18891 of 2019

J.Jayakar

... Petitioners

-Vs-

1.J.Susheela

2.J.Jawahar

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the fair and decreetal order dated 26-07-2019 passed in I.A.No.2 of 2019 in O.S.No.5348 of 2012 pending on the file of the XVIII Additional Judge, City Court, Chennai.

For Petitioner : Mr.P.C.Harikumar

For Respondents: Mr.V.Chandrasekar

O R D E R

This Civil Revision Petition has been filed against the fair and decreetal order dated 26-07-2019 passed in I.A.No.2 of 2019 in O.S.No.5348 of 2012 pending on the file of the XVIII Additional Judge, City Court, Chennai.

2. The first defendant filed the interlocutory application in I.A.No.2 of 2019 under Order VII Rule 11(a) and (d) read with Section 151 of C.P.C., on the ground of no cause of action or no locus standi and also that the suit is barred under law.

3. The main suit was filed by the plaintiff / mother against the defendants, who are the sons of the plaintiff, for partition of 1/3rd share of the suit property and for separate possession. The suit is in the trial stage, where P.W.1 is in the witness box for cross examination. At this juncture, the present application has been filed by the first defendant to reject the plaint.

4. I have heard Mr.Harikumar, learned counsel appearing for the petitioner, who would submit that, the suit was filed in the year 2012 for partition by the mother. During the pendency of the suit, the mother / plaintiff, on 24.06.2013, executed a deed of settlement, which has been registered as Document No.1957 of 2013 in the concerned Registrar Office and by virtue of the said settlement deed, during the pendency of the suit, the very cause of action itself, which has been made by the plaintiff in the plaint at the time of filing of the suit, has got changed. Therefore, as of now, there is no cause of action to proceed further in the suit.

5. In this context, the learned counsel for the petitioner would also point out that in the proof affidavit filed by the plaintiff before the court below in paragraph No.3, it is stated that she had executed a Deed of Settlement dated 24.06.2013 registered as Document No.1957 of 2013 at SRO, Mylapore with regard to her undivided 1/3rd share in favour of her second son ie., the second defendant.

6. By citing this, the learned counsel for the petitioner would submit that as of now, there is no cause of action to proceed further in the suit. Therefore, on that ground alone, the plaint itself can be rejected under Order VII Rule 11(a) and (d) read with Section 151 of C.P.C.

7. I have heard Mr.Chandrasekaran, learned counsel, who entered appearance for the caveators, who would submit that, the plaintiff / mother is a 85 years old lady and if at all during the pendency of the suit she executed a deed of settlement in favour of the second defendant, who is also one of the son of the plaintiff, and in this regard a registered settlement deed dated 24.06.2013 in respect of the portion of the property, which is the subject matter of the suit, was executed by the plaintiff, the same can be agitated as one of the issues triable before the Court below. But, on that ground itself, the petitioner cannot seek the indulgence of this Court to move the application under Order VII Rule 11(a) and (d) read with Section 151 of C.P.C., and since the application had been rightly rejected by the Court below, this revision petition deserves to be dismissed.

8. I have considered the submissions made by the learned counsel appearing for both sides and perused the materials placed on record, including the impugned order.

9. As has been rightly pointed out by the learned counsel for the respondents herein, the suit is in the trial stage and if at all there is any grievance for the revision petitioner / first defendant with regard to the Settlement Deed dated 24.06.2013, settling the portion of the property as if belonging to the plaintiff / mother, in favour of the second defendant son, whether such settlement will stand in the legal scrutiny also has to be decided as one of the issues, and therefore, for the said reason, the very purpose of the suit itself, laid by the plaintiff for partition of 1/3rd share of the suit property and for separate possession, cannot be said to be defeated. Further, it is submitted by the learned counsel for the respondents that the said issue with regard to the Deed of Settlement dated 24.06.2013 has already been framed as one of the issues.

10. However, learned counsel for the revision petitioner would submit that though it has been framed as one of the issues, specifically it has not been framed as if that the said settlement deed has been executed by the plaintiff during lis pendens.

11. It goes without saying that during the pendency of the suit ie., between the year 2012 and now, if any property is exploited by any of the party, including the plaintiff like the alleged settlement deed, certainly such transaction is lis pendens and therefore, the trial Court will definitely shall take care of those issues as one of the issues along with the other issues framed in this regard. Moreover, since the suit has already been in the trial stage, where P.W.1 is in the stage of cross examination, at this juncture, the present application filed by the first defendant to reject the plaint for want of cause of action etc., cannot be accepted, as no such situation arises now to reject the plaint on the ground of alleged want of cause of action.

12. Therefore, the impugned order passed in the application filed by the first defendant to reject the plaint, has been, of course, rightly made by the Court below and it does not require any interference from this Court. Hence, the present revision fails and is liable to be dismissed, it is, accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

13. However, since the plaintiff is 85 years old and the suit is pending from the year 2012, the Court below is hereby directed to complete the trial within a period of four months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

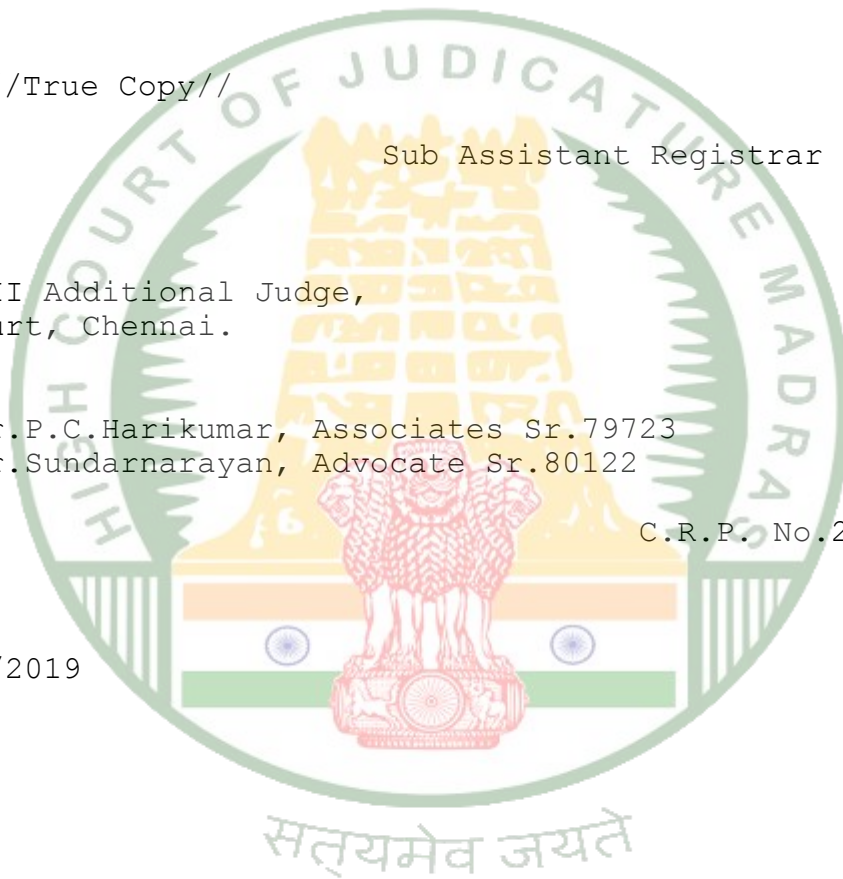
To

The XVIII Additional Judge,
City Court, Chennai.

+1cc to Mr.P.C.Harikumar, Associates Sr.79723
+1cc to Mr.Sundarnarayan, Advocate Sr.80122

C.R.P. No.2914 of 2019

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srg 24/10/2019



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