

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

C.R.P.No.3336 of 2019
and C.M.P.No.21646 of 2019

R.Velusamy

... Petitioner

-Vs-

V.Sakthivel

... Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the fair and final order dated 07.08.2019 made in I.A.No.826 of 2018 in O.S.No.20 of 2013 on the file of the IV Additional District and Sessions Judge, Coimbatore.

For Petitioner : Mr.S.Arjun

O R D E R

This revision has been filed against the fair and final order dated 07.08.2019 made in I.A.No.826 of 2018 in O.S.No.20 of 2013 on the file of the IV Additional District and Sessions Judge, Coimbatore.

2. Before the trial Court, the revision petitioner was the first defendant and the respondent was the plaintiff. The respondent / plaintiff filed a suit for partition against the first defendant / revision petitioner ie., the father of the plaintiff and subsequent third party purchasers of the suit property have also been arrayed as defendants in the suit. In the partition suit filed by the plaintiff, written statement had been filed by the first defendant stating that, the subject property of the suit is not an ancestral property and therefore, the question of inheritance to and in favour of the plaintiff does not arise and moreover those properties have already been sold or meddled with by the first defendant / revision petitioner long back. In that circumstances, the first defendant / revision petitioner filed I.A.No.826 of 2018 under Order VII Rule 11 (a), (b) and (d) to reject the plaint in limine. Since the said application has been rejected by the trial Court through the impugned order, the present Civil Revision Petition has been filed.

3. Learned counsel for the petitioner would submit that, the suit property is not an ancestral property and therefore the question of inheritance does not arise. Moreover, the plaintiff's mother, who is the deserted wife of the first defendant, along with the plaintiff when he was a minor, earlier filed a suit in O.S.No.80 of 1992 and the same was dismissed. However, without disclosing the same, now the mother has not come forward and only the son, who has become major, has come up with the present suit with an alleged cause of action, which does not arise in the suit and therefore, on that ground the revision petitioner sought to invoke Order VII Rule 11 of C.P.C., to reject the plaint.

4. It is also the case of the revision petitioner before the trial Court that, the proper valuation has not been made in the suit and as a result, proper court fee has also not been paid and that is also one of the reasons to invoke Order VII Rule 11 of C.P.C.

5. In this context, the learned counsel for the revision petitioner would further submit that in view of no cause of action and no proper court fee paid, the trial Court ought to have allowed the application filed by the revision petitioner by invoking Order VII Rule 11 of CPC. However, without considering these aspects in proper perspective, since the trial Court has dismissed the I.A., the learned counsel for the petitioner seeks the indulgence of this Court in this revision.

6. I have considered the said submissions made by the learned counsel for the petitioner also have gone through the materials placed on record.

7. No doubt, earlier a suit in O.S.No.80 of 1992 was filed by the mother of the plaintiff herein before the I Additional Subordinate Judge, Coimbatore, which was decided on 08.12.2003, where the plaintiff stood as second plaintiff as minor. Now in the present suit, the plaintiff has raised a cause of action stating that, he is the son of the first defendant and he came to know about the existence of ancestral property only in June 2012 and on subsequent dates. He further claimed to have come to know that the suit property had been bequeathed to and in favour of D2 to D12, the defendants who are third parties, some time in 1992, 1995 and 1996. Therefore, raising this cause of action, he laid the suit for partition between the plaintiff and the first defendant, of course with other defendants, who are third party purchasers.

8. Written statement had been filed by the first defendant / revision petitioner, where he claimed to have stated that, the suit property has already been bequeathed long back since it is a self acquired property of the first defendant, the question of partition does not arise and therefore on the ground of no cause of action, the plaint has to be struck off. Thus, the said reasons cited above in the written statement, apart from the reason of alleged deficit fee, since has not been taken into account by the trial Court, the revision petitioner filed the present application, invoking Order VII Rule 11 of CPC to reject the plaint.

9. Though such a case has been set up by the revision petitioner before the trial Court, the trial Court, after having gone through the said aspects, was not convinced and accordingly dismissed the I.A., stating that, the suit in O.S.No.80 of 1992 was not decided on merits and therefore, the principle of res judicata was not applicable. Moreover, the suit has been filed within the period of three years from the date of knowledge, after the plaintiff becoming major and therefore, whether the plaintiff is having right over the suit property or not can be decided only after the trial for which both the parties have to let in evidence. The learned Judge also has found that the plaintiff has paid the correct court fee.

10. When the above two reasons raised by the plaintiff to reject the plaintiff, ie., want of cause of action and want of court fee, since has been considered and rejected by the trial Court, of course with acceptable reasons, the impugned order requires no interference by this Court. Moreover, seeking a share in the alleged ancestral property of the first plaintiff, the plaintiff being the son of the first defendant, laid the suit and therefore, the substantive right in the property has to be decided in the suit, which is possible only after the trial and therefore, at the threshold, the plaint cannot be rejected on the alleged reasons of want of cause of action and want of Court fee, even though the same have been considered and decided by the trial Court.

11. In that view of the matter, this Court feels that there is no perversity or infirmity in the impugned order passed by the trial Court. Hence, no interference is called for by this Court in this revisional jurisdiction arises in this case. In result, the civil revision petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(J)

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Sub Assistant Registrar

KST

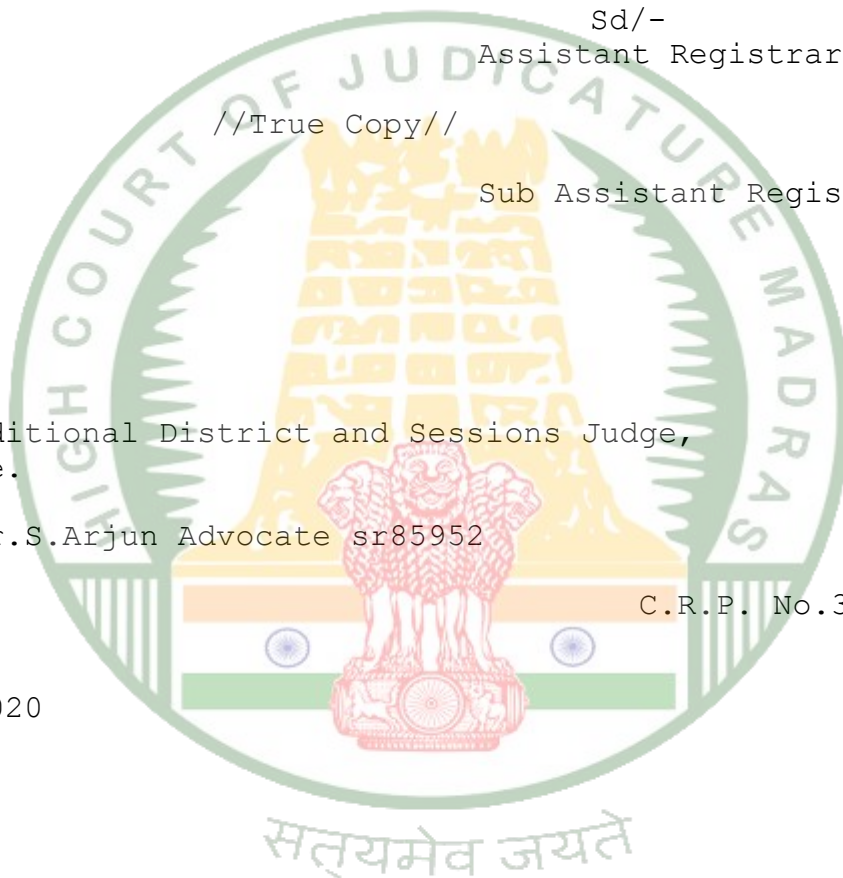
To

The IV Additional District and Sessions Judge,
Coimbatore.

+1cc to Mr.S.Arjun Advocate sr85952

C.R.P. No.3336 of 2019

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