

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R.SURESH KUMAR

C.R.P.No.3775 of 2019 and
C.M.P.No.24786 of 2019

1.A.Ramasamy
2.R.Dhanalakshmi

... Petitioners

Vs.

S.Sivakumar

... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 27.08.2019 passed in I.A.No.3 of 2019 in O.S.No.12 of 2016 on the file of I Additional District Court, Erode.

For Petitioner : Mr.K.Govi Ganesan

ORDER

This revision petition has been filed against the fair and decretal order made in I.A.No.3 of 2019 in O.S.No.12 of 2016 on the file of the I Additional District Court, Erode, by order dated 27.08.2019.

2.Before the trial Court, the respondent/plaintiff filed a suit for recovery of money against the revision petitioners, who are the defendants in the suit. Before the trial Court, on behalf of defendants 3 and 5, who are the revision petitioners, an application under Order VII

Rule 11 of the Civil Procedure Code was filed to reject the plaint on the ground that, there has been no cause of action to file the suit and also on the ground that, the suit cannot be maintained, in view of the partnership firm is unregistered, because of Section 65(1) of the Indian Partnership Act, 1932.

3.The learned Judge, after hearing both sides and after having considered both the grounds, have rejected the same and petition was dismissed, as against which, defendants 3 and 5, who are the revision petitioners, filed the present revision.

4.Heard the learned counsel appearing for the revision petitioners, who would submit that, though both the grounds have been raised, the same have not been properly considered by the learned Judge and since there has been no cause of action to file the suit and the suit is barred because of non-registration of the firm under the Indian Partnership Act, the said suit should not have been entertained and therefore, the application filed by the defendants to reject the plaint under Order VII Rule 11 C.P.C. could have been accepted.

5.I have considered the said submission made by the learned

counsel appearing for the revision petitioners and I have gone through the materials placed before this Court.

6.The first ground raised by the revision petitioners to reject the plaint was the cause of action. In this regard, I have read the cause of action at para 18 of the plaint, which discloses chronologically what had happened from 2010 and ultimately it was the claim of the plaintiff that, on 07.11.2014 defendants made part payment, therefore, there has been a cause of action on the side of the plaintiff. Therefore, *prima facie* the same can be accepted and on that ground, the plaint cannot be rejected.

7.Insofar as the second ground is concerned, the firm having not been registered, the suit cannot be filed, in view of Section 65(1) of the Indian Partnership Act. This Court, after having gone through the provision and also the reasons stated in the discussion made by the learned Judge through the impugned order, is of the firm view that, the said ground also cannot be accepted for the simple reason that, the suit was filed not by the Partnership Firm, but only by the plaintiff as a Proprietor of one M/s.Seven Hills Trading Agency. Only the 1st

defendant viz., Raajaswamy Mills is a Partnership Firm represented by its Partner, therefore, the said embargo, as alleged by the learned counsel appearing for the revision petitioner under the provisions of the Partnership Act, would not apply to the present case, as the partnership firm is not the plaintiff, who instituted the suit.

8. Therefore, both the grounds are untenable and after having considered both the grounds, the learned Judge has given acceptable reason for rejecting the said plea made by the revision petitioners to reject the plaint. Therefore, this Court feels that, the said order does not warrant any interference from this Court.

9. In the result, this Civil Revision Petition fails and hence, it is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

21.11.2019

Index : Yes/No

Speaking Order : Yes/No
Sgl

To

The I Additional District Court,
Erode.

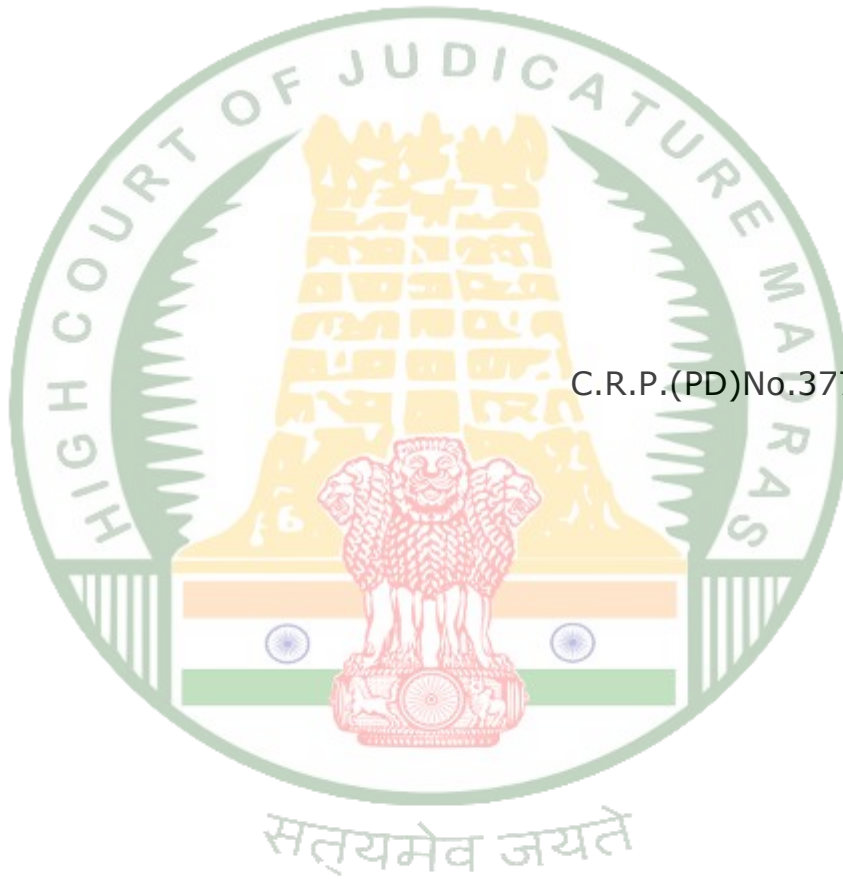


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C.R.P.(PD)No.3775 of 2019

R.SURESH KUMAR, J.

Sgl



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