

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

**CRP(PD) No.2722 of 2017 &
CMP.No.12916 of 2017**

1. A. Raajendher
2. G.Parthasarathy
3. D.Maheswari

.. Petitioners

-vs-

G.A.Alex Stephen

.. Respondent

Prayer: Civil Revision Petition under Article 227 of Constitution of India against the order and decretal order dated 16.3.2016 made in I.A.No.15464 of 2016 in O.S.No.5688 of 2009 passed by the learned XVII Assistant City Civil Judge, Chennai.

For Petitioners : Mr.A. Raajendher

For Respondent : Mr.M. Abdul Razack

ORDER

सत्यमेव जयते

This Civil Revision Petition is filed against the order and decretal order dated 16.3.2016 made in I.A.No.15464 of 2016 in O.S.No.5688 of 2009 passed by the learned XVII Assistant City Civil Judge, Chennai.

2. The respondent as a plaintiff filed a suit in OS.No.5688 of 2009 before the XVII Assistant City Civil Judge, Chennai against the revision petitioners/defendants for permanent injunction. The Revision

Petitioners/defendants filed a petition in I.A.No.15464 of 2016 under Order VII, Rule 11(a) and (b) CPC for rejection of plaint on the ground of non-disclosure of cause of action, under valuation of the suit and for non-payment of required Court fees.

3. The events happened before the trial Court leads us to note that the defendants have periodically taking adjournments and not conducting the case. Even at the stage of trial, they have not participated in the same and they were set exparte and exparte decree was also passed. Thereafter, the petition to set aside the exparte decree was filed and the same was allowed. When the cross examination of PW1 was in progress, petition to reject the plaint came to be filed by the petitioners/defendants.

4. The trial court held that there are triable issues in the suit relating to the merits as well as previous proceedings in OS.No.5900 of 2009, therefore, without letting in oral evidence and documentary evidence, the court cannot decide the points for consideration at the premature stage. It was further held that the issues raised in the petition are also issues involved in the main suit and thereby dismissed the petition.

5. This Court, by an order dated 1.9.2018, granted stay of all further proceedings in the suit.

6. Later, the parties have submitted before this Court that the suit is at

the stage of pronouncing judgment. Thereafter, by an order dated 25.6.2018, directed the trial court to pronounce the judgment on merits and in accordance with law without awaiting for the result of the present Civil Revision Petition, as if there is no revision pending before this Court. However, it is submitted that the judgment is not pronounced so far.

7. Learned counsel for the respondent would submit that they have let in elaborate evidence with regard to all the issues and the matter is pending for judgment. The petitioner again filed a petition for rejection of plaint and the same was dismissed as it is hit by resjudicata. Therefore, he would seek that the revision petition merits no consideration and the same has to be dismissed.

8. Now that the suit has reached final stage. Therefore petition filed by the revision petitioners to reject the plaint at this stage is not maintainable. The order passed by the trial Court is sustainable. The petitioners/defendants are entitled to raise all these issues in the appeal. Civil Revision Petition is dismissed. No costs. Consequently, connected CMP.No.12916 of 2017 is closed.

11.06.2019

msr
index:Yes/No
internet:Yes/No
speaking order/non speaking order

M.GOVINDARAJ, J.

msr

To

1. The XVII Assistant City Civil Judge, Chennai.



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