



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.08.2019

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (MD) (NPD)No.1397 of 2011

and

M.P. (MD)No.1 of 2011

WEB COPY

Arul Mary

:Petitioner/Respondent No.1/Defendant No.1

vs.

1.Varadha Devi

2.Premkumar

3.Sivakumar

4.Ajitha

5.Sajitha

: Respondents 1 to 5/Petitioners/Plaintiffs

6.Ramachandran Nair

7.Bhagavathy Pillai

8.Somasekharan Nair

9.Rangaswamy Nadar

10.Selvamony

11.Paulthankam

12.Wilson

13.Bensi @ Pensi

14.Kalasta Baby

15.Pelsi

16.Mangalam

17.Hemalatha

18.Anitha

19.Sekhar

20.Saraswathy

21.Sheeja

22.Sheeba

23.Syam

:Respondents 6 to 23/Respondents 3,5,7,8,10,
12 to 16, 18 to 25/Defendants 3,5,7,8,10,
12 to 16 and 18 to 25

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, 1908, to set aside the order and decreetal order, dated 18.04.2011 passed by the learned I Additional District Munsif, Kuzhithurai, in I.A.No.468 of 2009 in O.S.No.139 of 1982.

For Petitioners

: Mr.K.N.Thampi

For R1 to R5

: Mr.K.Srikumaran Nair

R6 to R23

: Given up



ORDER

This Civil Revision Petition is directed against the order in I.A.No.468 of 2009 in O.S.No.139 of 1982.

2.The brief facts that are necessary for the disposal of this petition are as follows:

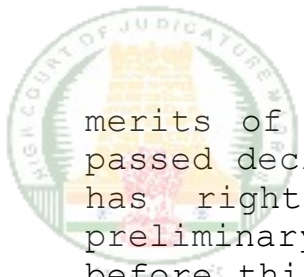
2.1.The respondents 1 to 5 herein filed the suit in O.S.No.139 of 1982 before the I Additional District Munsif Court, Kuzhithurai, for partition and separate possession in respect of certain properties and also for other reliefs in respect of other items. In respect of few items of suit property, a preliminary decree was passed by the trial Court on merits. Thereafter, the plaintiffs filed an application for passing of final decree.

2.2.An application was also filed in I.A.No. 468 of 2009 in O.S.No.139 of 1982 for appointment of Advocate Commissioner to partition the suit items in terms of the preliminary decree, that was passed in the suit. This application was allowed, after recording the endorsement of Counsel appearing for some of the respondents before the lower Court. As against the order appointing the Advocate Commissioner, the above Civil Revision Petition is filed by the first defendant in the suit.

3.The learned Counsel for the revision petitioner submitted that a detailed counter affidavit was filed on behalf of the first defendant before the lower Court. It is stated that the lower Court has allowed the application for appointment of Advocate Commissioner, as if, the Counsel appearing for the first defendant had reported that he has no counter. It is brought to the notice of this Court that the endorsement was not made by the revision petitioner, but by some other respondents. Stating that the petitioner has raised substantial points in the counter affidavit and that the lower Court failed to advert to any of the contentions of the revision petitioner. The learned Counsel further submitted that an appeal filed by the revision petitioner as against the preliminary decree is pending. The learned Counsel also submitted that the order passed by the lower Court is liable to be set aside.

4.The lower Court, of course, referred to the counter affidavit filed by the revision petitioner before the lower Court. It is seen that the counter affidavit is only to the effect that the petitioner's contention were not properly considered before the trial Court at the time of passing of preliminary decree and that the revision petitioner could not put forth her case effectively, in view of the death of her Counsel during the pendency of the suit. It is also stated that the plaintiffs are not entitled to any share in the suit property, as the claim of plaintiffs was based on a fraudulent decree, that was obtained on 16.09.2004.

5.From the reading of whole counter, it is seen that the contentions raised by the revision petitioner are all about the



merits of the case in the suit. Once the preliminary decree is passed declaring the shares of plaintiffs, the revision petitioner has right, of course, to file an appeal, challenging the preliminary decree. Though an appeal was filed, it is now admitted before this Court that the appeal was dismissed in the year 2007. Unmindful of legal consequences, the revision petitioner has now taken prompt and sincere efforts in stalling the final decree proceedings by showing the pendency of the appeal and by disputing the rights of the plaintiffs. The petitioner cannot stall the final decree proceedings by filing a counter without substance. The petitioner has not obtained any order of stay of final decree before the appellate Court at any point of time.

6. In such circumstances, the revision petition is liable to be dismissed for want of merits. Accordingly, the Civil Revision Petition is dismissed. The order dated 18.04.2011 passed by the learned I Additional District Munsif, Kuzhithurai, in I.A.No.468 of 2009 in O.S.No.139 of 1982, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS)

To

The I Additional District Munsif,
Kuzhithurai.

Copy to: The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to Mr.K.SREEKUMARAN NAIR, Advocate (SR-80528[F] dated 08/08/2019)

+1 CC to Mr.K.N.THAMPI, Advocate (SR-80764[F] dated 08/08/2019)

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cmr

AE/ (22.08.2019) 3P 6C