



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2019

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WEB COPY

THE HONOURABLE MR.JUSTICE **N.ANAND VENKATESH**

C.R.P. (MD) (PD)No.344 of 2012

and

M.P. (MD)No.1 of 2012

Thayammal

:Petitioner/Respondent/
Respondent/Plaintiff

vs.

1.Azhagu Jothi
2.Chinnathai
3.Indurani
4.Sivagami

:Respondents/Appellants/
petitioners/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the judgment and decree, dated 09.09.2011 made in C.M.A.No.1 of 2011 on the file of the Subordinate Court, Periyakulam, reversing the order and decreetal order, dated 10.12.2010 made in I.A.No.55 of 2010 in O.S.No.222 of 2009 on the file of the District Munsif Court, Periyakulam.

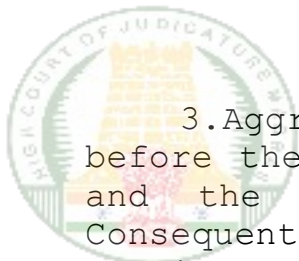
For Petitioner :Mr.K.Appadurai

For Respondents :Mr.V.Janakiramulu

ORDER

This petition has been filed challenging the order passed by the Court below allowing the appeal filed by the respondents against the order passed by the trial Court dismissing the application filed by the respondents under Order VII Rule 11 CPC to reject the plaint.

2.The petitioner is the plaintiff. The petitioner filed a suit before the Court below for the relief of specific performance and for the consequential relief of permanent injunction. The respondents filed an application under Order VII Rule 11 CPC seeking for rejection of plaint on the ground that the relief sought for in the suit is barred by limitation. The trial Court, by a fair and final order, dated 10.12.2010, dismissed the said application.



3. Aggrieved by the said order, the respondents filed an appeal before the Subordinate Court, Periyakulam, in C.M.A.No.01 of 2011 and the same was allowed by an order, dated 09.09.2011. Consequent to the said order, the plaint came to be rejected. Aggrieved by the same, the present revision has been filed before this Court.

4. The learned Counsel for the petitioner raised a preliminary objection with regard to the jurisdiction of the Court below in entertaining the appeal. For this purpose, the learned Counsel for the petitioner brought to the notice of this Court, Section 104 of CPC and Order 43 Rule 1 CPC. The learned Counsel, by drawing the attention of this Court to these provisions, submitted that the Court below did not have the power or jurisdiction to entertain the appeal as against an order dismissing the application under Order VII Rule 11 CPC. The learned Counsel, therefore, submitted that the order passed by the Court below is liable to be set aside on this sole ground.

5. The learned Counsel for the respondents submitted that the order passed by the Court below has resulted in the rejection of plaint and therefore, a Civil Revision Petition cannot be maintained before this Court and only an appeal suit can be filed by the petitioner. Therefore, the learned Counsel submitted that the Civil Revision Petition filed under Article 227 of Constitution of India is not maintainable.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. This Court finds some force in the submission of the learned Counsel for the petitioner. Right of appeal is a creature of Statute and a party can seek for an appellate remedy, only if it is specifically provided under the enactment. Section 104 CPC and Order 43 and Rule 1 CPC specifically provide for the orders, against which an appeal can be filed. A careful reading of Order 43 Rule 1 CPC shows that no appeal can be filed as against an order passed under Order 7 Rule 11 CPC. Therefore, as rightly contended by the learned Counsel for the petitioner, the Court below lacked jurisdiction in entertaining the appeal. The order passed by the Court below is liable to be set aside on this sole ground.

8. Insofar as the contention raised by the learned Counsel for the respondent is concerned, since this Court has held that the Court below lacks jurisdiction to entertain the appeal, the consequence of such an order need not be gone into by this Court, in the present revision petition.



9. In the result, the order passed by the Court below in C.M.A.No.1 of 2011, dated 09.09.2011, is hereby set aside and accordingly, this Civil Revision Petition is allowed. The Court below is directed to complete the proceedings in O.S.No.222 of 2009 within a period of three months from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The Subordinate Judge, Periyakulam.

2. The District Munsif, Periyakulam.

+1 CC to M/s.K.APPADURAI, Advocate (SR-85773[F] dated 06/09/2019)

+1 CC to M/s.V.JANAKIRAMULU, Advocate (SR-86001[F] dated 09/09/2019)

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