



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.04.2019

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P (MD) No.176 of 2019
and
C.M.P (MD) .No.783 of 2019

1.P.Jayanthi
2.R.Shanthi
3.P.Vasanthi
4.B.Suganthi

... Petitioners/ Petitioners/
Plaintiffs

vs.

S.Rameshkumar

...Respondent/Respondent/
Defendant

PRAYER: This Civil Revision Petition has been filed under Article 227 of Constitution of India against the fair and decreetal order dated 13.11.2018 passed in I.A.No.164 of 2018 in O.S.No.38 of 2017 on the file of the I Additional District Judge, Trichirappalli.

For Petitioners : Mr.S.C.Herold Singh
For Respondent : Mr.M.Suresh

ORDER

The Civil Revision Petition has been filed against the fair and decreetal order dated 13.11.2018 passed in I.A.No.164 of 2018 in O.S.No.38 of 2017 on the file of the I Additional District Judge, Trichirappalli.

2. I.A.No.164 of 2018 was filed by the petitioners/plaintiffs by stating that the suit has been filed by them seeking for partition and other reliefs. The learned counsel for the petitioners has contended that on 07.08.2016, an agreement was entered into between the petitioners and the defendant. The learned counsel for the petitioners further contended that the suit may fail by reasons of technical grounds, formal defects such as specific alternative relief, such as part of claim has not been sought for. Hence, the petitioners have to file a comprehensive suit covering all the reliefs of prayers on the same cause of action. They further stated that no prejudice would be caused to the defendant by filing a fresh suit and hence, they sought for granting leave to them to withdraw the suit with a liberty to file a fresh suit with the same cause of action.



3. The learned counsel for the respondent has filed a counter statement by stating that the averments made in the petition are all false and very much denied by the respondent.

4. On hearing both sides and also on perusal of records, the trial Court has observed that the petitioners had simply stated that there are some formal defects and hence, an alternative relief is sought for. It is seen that since there is a formal defects which necessitates the suit to be withdrawn for filing a comprehensive suit, details of such alleged formal defects have not been stated in the petition or during the course of arguments. What is the sufficient grounds or specific alternative relief, have not been stated in the petition and hence, the trial Court has dismissed the said interlocutory application. Aggrieved against the said order, the petitioners have filed this Civil Revision Petition.

5. If the petitioners have really stated what are the technical grounds or formal defects in a suit for partition, then the trial Court will observe the necessity of making such a relief and will definitely consider the same based on the facts and circumstance of the case, but the affidavit filed by the petitioners does not contain anything about what sort of alternative relief could be prayed for. The oral representation made by the learned counsel for the petitioners is very much relied upon the agreement and based on the said agreement, he wants alternative relief in the said suit.

6. Heard both sides.

7. It is observed that now the issues were framed and the case is ready for trial. The petition filed by the petitioners does not contain the exact technical difficulties which was filed in the earlier suit. If any alternative remedy is placeable before the Court by way of evidence, the trial Court will definitely consider the same, if it is very necessary. Hence, filing this revision petition will cause further delay in proceeding with the case. In view of the above, the petitioners are at liberty to place all the evidences and the things that are necessary for making such alternative relief before the trial Court.

8. In the result, this Civil Revision Petition is dismissed. No Costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //



To

I Additional District Judge, Trichirappalli.

+1 CC to M/s.M.SURESH, Advocate (SR-64500[F] dated 30/04/2019)

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-64812[F] dated 02/05/2019)

C.R.P(MD)No.176 of 2019
and

C.M.P(MD) .No.783 of 2019
30.04.2019

msa

TK/SAR- /28.05.2019/3P/4C