



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2019

CORAM :

THE HONOURABLE MRS.JUSTICE **S.RAMATHILAGAM**

CRP(MD) No.407 of 2019

and

C.M.P. (MD) No.2039 of 2019

S.Hoomayun

... Petitioner/Petitioner/Plaintiff

vs.

1.S.Sikkanthandar

2.S.Raja

... Respondents/Respondents/Defendants

PRAYER:- Civil Revision Petition filed the under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.129 of 2018 in O.S.No.108 of 2009 dated 05.01.2019 on the file of Principal District Munsif and Sessions Court, Ramanathapuram.

For Petitioner : M/s.G.K.Chitradevi

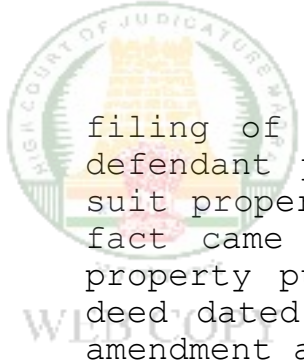
ORDER

This Civil Revision Petition has been filed to set aside the order passed in I.A.No.129 of 2018 in O.S.No.108 of 2009 dated 05.01.2019 on the file of the learned Principal District Munsif and Sessions Court, Ramanathapuram.

2.I.A.No.129 of 2018 was filed by the petitioner herein seeking permission to withdraw the suit and to permit to file a fresh suit.

3.The petitioner herein/plaintiff contended that the inam settlement executed by the first respondent herein/first defendant was cancelled and another document was executed by the first respondent herein/first defendant on 24.07.2003. Hence, the document, which was registered on 24.07.2003 is null and void and also the sale deed executed by the first respondent herein/first defendant in favour of second defendant on 17.03.2009 is also not valid and hence, the petitioner herein sought for permanent injunction with regard to the sale deed and declaration with regard to newly registered document after the cancellation of the said

4.Further, it is contended by the petitioner herein that before



filing of the said suit, the second respondent herein/the second defendant purchased 4 acres 72 cents at the southern side of the suit property and after the filing of the proof affidavit, the said fact came to the knowledge of the petitioner herein. The suit property purchased by the second defendant is related to the sale deed dated 23.06.2011. Hence, the petitioner herein also made an amendment after knowing the said fact.

5.It is observed from the said contents that now the suit in O.S.No.108 of 2009 stands at the stage of arguments. The grievance of the petitioner herein in the affidavit is that the learned counsel engaged by him has sought for the relief of permanent injunction without seeking for declaration. Hence, the petitioner sought for withdrawing the said suit and seeking permission to file a fresh suit.

6.The second respondent/second defendant contended that the said suit was filed in the year 2009 and a counter claim was filed by the second respondent herein/second defendant in the year 2010, in which, the second defendant already contended that the petitioner herein/plaintiff seeking permanent injunction without asking for a prayer of declaration, which is not maintainable. It is further contended by the second defendant when there is no dispute over the title of the suit property, the petitioner herein ought to have sought for a relief of declaration, whereas, in spite of the fact that, the petitioner herein has not come forward with the said relief.

7.Further, it is contended by the second respondent herein/second defendant that subsequently the written statement also filed. Hence, the petition filed under Order XXIII Rule 7 of CPC by the petitioner claiming that it is a formal defect that is the relief of declaration was not claimed at the first instance and hence, the permission for withdrawal and for filing a fresh suit is not a bona fide one and the provision of Order XXIII Rule 1 (3) of CPC is as follows:

(3) where the Court is satisfied,-

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of such suit or such part of the claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of the claim.

<https://hcservices.ecourts.gov.in/hcservices/>

8.After considering the facts and circumstances, the trial Court has given a finding that the said petition was not filed even



after filing of the written statement, whereas, the petitioner herein/the plaintiff failed to do so and even after filing the written statement that is nearly after 8 years, the petitioner herein filed the said petition by stating that the omission is a formal defect. The suit also stands in the stage of completion of trial and posted for arguments and hence, the said petition was dismissed by the trial Court.

9. Heard the learned counsel for the petitioner herein/plaintiff and perused the records.

10. On perusal of records, it is observed that the petitioner herein sought for the relief that the said sale deed, which was executed by the first respondent herein/first defendant dated 17.03.2009, is not valid after the cancellation of the said limit in favour of the the petitioner herein/plaintiff. The other relief with regard to injunction relating to the suit property is against the second respondent herein/second defendant. It is also observed that the counter claim was made by the second respondent herein/second defendant immediately after the petitioner herein filed a suit and subsequently, the written statement was also filed and during all these proceedings, the petitioner herein has not made any attempt for altering the prayer for withdrawing the suit and for filing a fresh suit.

11. From the records and from the arguments of the learned counsel for the petitioner, it is observed that if really the petitioner herein has aggrieved over the relief, he sought in the plaint, he would have acted diligently at the earliest point of time. The reason stated by the petitioner herein that it is only a formal defect and it can be allowed for filing the fresh suit is not a fair one. Hence, the findings of the trial Court is very much reasonable, which does not warrant any interference of this Court.

12. In view of the above, there is no merit in this Civil Revision Petition and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

sd/

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Ramanathapuram.

mm

SP/05.04.2019/3P/2C