



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.04.2019

CORAM

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THE HON'BLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P. (PD) (MD) No.2192 of 2018

and

C.M.P. (MD) No.9752 of 2018

S.Ponnusamy

:Petitioner/3rd Defendant

Vs.

1.S.Shanmuga Sundaram

:1st Respondent/Plaintiff

2.P.Sivanthammal

3.S.Pandi

:2nd & 3rd Respondents/1st & 2nd Defendant

4.Kamaraj

5.Kamayee

6.P.Shanthi

7.Dhanraj

8.Soundarammal

9.Elangovan

10.Subramanian

11.Leelavathy

12.Karuppiah

13.Murali @ Alagarsamy

14.Anandan

15.Vimala

:Respondents 4 to 15/ Respondents 4 to 15

Prayer:- Civil Revision Petition is filed, under Section 227 of the Civil Procedure Code, to strike off the plaint in O.S.No.115 of 2018 from the file of the Subordinate Judge, Periyakulam.

For Petitioner

: No appearance

For R2, R3, R5 to R12
and R15

: Mr.M.Saravanan

For R1, R4 &
R13

: Mr.R.Vijayakumar

For R14

: No appearance

ORDER

This civil revision petition has been preferred by the petitioner against the cognizance of the plaint by the Sub Court, Periyakulam, in O.S.No.115 of 2018.

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



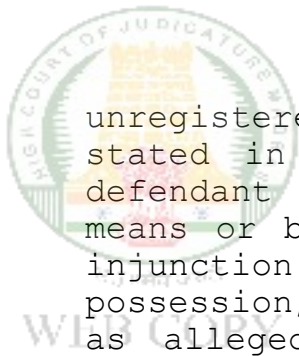
2.The petitioner in the grounds stated that the very taking of the plaint in O.S.No.115 of 2018 is nothing but an abuse of process of law. The facts in the said case have not been set forth in the plaint and the said facts do not constitute the cause of action and hence, the plaint ought to have been rejected. Further, in the grounds, it is contended that the Court below failed to take note that the plaint which is under reference does not contain the list of documents consists of the plaint, written statement filed in the earlier suit in O.S.No.86 of 2009, which is not only in violation of Order 7 Rule 14 of C.P.C., but also purposefully omitted by the first respondent. The next ground raised by the petitioner is that the act of suppression of material facts relating to the earlier suit in O.S.No.86 of 2009 was not observed by the Court below and this is an abuse of process of law by the plaintiff by suppressing the said fact and filling the suit is only vexatious one. Further, the petitioner has averred that the judgment and decree passed in O.S.No.86 of 2009, has not been challenged and in the present suit, a contrary claim of independent ownership through partition and permanent injunction have been sought for.

3.The grievance of the petitioner is that the said case filed by the first respondent/plaintiff was taken on file. Today, the plaintiff who has preferred a civil revision petition has not appeared before the Court. He has filed this civil revision petition to strike off the plaint in O.S.No.115 of 2018. In spite of the case is posted for disposal today, there was no representation for the first respondent/plaintiff and R14.

4.On perusal of the records and also hearing the arguments, it is observed that the respondents 1 and 15 have already filed a suit in O.S.No.86 of 2009 for the relief of permanent injunction restraining the petitioner/defendant from interfering with the peaceful possession and enjoyment of the suit properties.

5.The respondent in the said suit claimed that there was a oral partition taken place in the year 1994 and the same was reduced into writing on 26.09.1995. Based on the said unregistered partition agreement, the first plaintiff's father has taken possession of his land. On 04.04.2000, the first plaintiff's father has executed a registered settlement deed in favour of his daughter and the possession was also handed over to the first plaintiff and as per the settlement deed they sought for the said relief.

6.In the written statement, the revision petitioner is the only defendant who he contested by disputing the unregistered partition and also the subsequent separate possession and enjoyment of the suit property by the plaintiff and the other parties. The revision petitioner has disputed the said oral partition which took place in

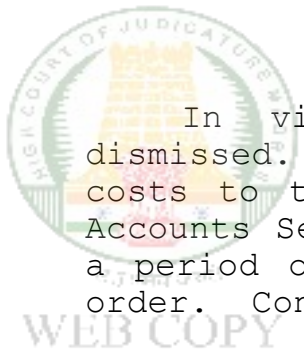


unregistered partition. However, the petitioner/defendant has also stated in para 11 of the written statement that "however the defendant undertakes to abide by any partition through amicable means or by competent Civil Court. As such, the plaint for a bare injunction is not maintainable without the relief of recovery of possession, even assuming that there was a partition on 26.09.1995 as alleged." The said suit was vehemently contested by the petitioner/defendant and the said suit was dismissed by the trial Court on 28.09.2011. Aggrieved over the same, the plaintiff herein filed the present suit claiming partition, in which, the plaintiff has disclosed the fact of filing the earlier suit in O.S.No.86 of 2009 claiming the relief of permanent injunction based on the unregistered partition agreement.

7.The respondent/plaintiff contended that he issued a legal notice to the defendants on 22.06.2018 for an amicable partition of the suit properties by executing a registered partition deed among them and the relevant documents were also filed by the plaintiff in the said suit. The respondent also contended that he had filed all the necessary documents viz., copies of the joint patta and the certified copy of the decree and judgment made in O.S.No.86 of 2009. Hence, the main contention raised by the respondent/plaintiff is that the earlier suit was dismissed based on the unregistered partition deed.

8. It is seen from the records that even, this Court granted an interim stay in C.M.P.(MD)No.9752 of 2018 of all further proceedings in O.S.No.115 of 2018 pending on the file of the Subordinate Judge, Periyakulam and dispensed with the notice to the respondents 11 to 15. Since the relief is only as against the first respondent, the revision petitioner, who claimed that service has to be effected to the other respondents, had delayed the proceedings. After obtaining the stay in the said civil revision petition, even today he has not appeared and all the other respondents have appeared.

9.Considering the facts and circumstances of the case and also the submission made by the petitioner that though he has given no objection for getting the partition through civil proceedings or any other Forum, based on the said dismissal, the plaintiff has filed the present suit for partition, for which, the revision petitioner again has raised objections. Hence, the grievance expressed by the petitioner in bringing the suit cannot be a reasonable one. The present suit filed by the plaintiff is for claiming partition of the suit property and for division of the suit property into 1/6 share by metes and bounds. In the present suit, the petitioner is ranked 3rd defendant and he is entitled to 1/6 share.



In view of the above, the civil revision petition is dismissed. The petitioner shall pay a sum of Rs.1000/- towards costs to the credit of the Chief Justice Relief Fund (payable in Accounts Section of the High Court Registry, Madurai Bench), within a period of two week from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To
The Subordinate Judge,
Periyakulam.

Copy to: The Section Officer,
Accounts Section,
Madurai Bench of Madras High Court,
Madruai.

+1 CC to Mr.D.MALAICHAMY, Advocate SR-60021.
+1 CC to Mr.R.VIJAYAKUMAR, Advocate SR-60026.
+1 CC to Mr.R.SUBRAMANIAN, Advocate SR-60209.

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