

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 1466 of 2018
in
C.M.P.No. 7820 of 2018

Thilagavathi

..Petitioner/1st Defendant/
Petitioner

Vs.

1.Mottukuju @ Vijaya

..1st Respondent/Plaintiff/
1st Respondent

2.Kannammal @ Vasanthamani

3.Baby

4.Neelavathi

5.Rajamani

6.Rathinammal

..Respondents 2 to 6/Defendant 2 to 6
Respondents 2 to 6

Prayer: Petition filed under Article 227 of the Constitution of India, against the fair and decreetal orders dated 08.12.2017 in I.A.No. 782 of 2017 in O.S.No. 1377 of 2012 on the file of the II-Additional District Munsif's Court, Coimbatore.

For Petitioner : Mr.C.Prasanan

For Respondents : Mr.S.L.Mouli for R1.

O R D E R

This challenge in this revision is to the dismissal of I.A.No. 872 of 2017 filed under Order 7 Rule 11 seeking rejection of the plaint on the ground that suit is barred by res-judicata and on the ground that the suit itself is an abuse of process of Court. The facts leading to the filing of the suit as well as the application are as follows:-

2. The suit in O.S.No. 1377 of 2012 was filed on 18.07.2012 by the first respondent herein seeking partition and separate possession on her 1/7th share in the suit properties. Even before filing of the present suit, the petitioner herein, who has arrayed as the first defendant in O.S.No. 1377 of 2012 had filed a suit in O.S.No. 701 of 2006 seeking decree for permanent

injunction against the plaintiff in O.S.No. 1377 of 2012 and others claiming that her mother had executed settlement deed in her favour on 07.07.2000. Claiming title and possession under the said settlement deed, the petitioner herein, as a plaintiff in O.S.No. 701 of 2006 sought for bare injunction. The Trial Court framed an issue regarding the validity of the settlement deed. It also rendered a finding that the settlement deed is true and valid. The Court, however, dismissed the suit for bare injunction on the ground that the plaintiff has not proved that she was in possession of the property on the date of the suit. This judgment came to be passed on 14.09.2012 that is after institution of the partition suit on 18.07.2012.

3. Taking advantage of the judgment and finding regarding the validity of the settlement deed in the said judgment, the petitioner herein, the first defendant in O.S.No. 1377 of 2012 namely, the suit for partition had come up with the application under Order 7 Rule 11 of C.P.C. The Trial Court, upon a consideration of the circumstances of the case concluded that the finding in the injunction suit regarding the validity of the settlement deed cannot operate as res-judicata in the present suit for partition. Whether the finding as to the validity of the settlement deed in O.S.No. 701 of 2006 would operate as res-judicata in the present suit for partition has to be tested only after Trial. The Court also found that there was cause of action for suit and dismissed application under Order 7 Rule 11. Aggrieved, the petitioner, who is the first defendant in O.S.No. 1377 of 2012 has come up with this civil revision petition

4. Heard Mr. C.R.Prasanan, the learned counsel for the petitioner and Mr. S.L.Mouli, learned counsel for the 1st respondent. The other respondent though served has not appeared either in person or through counsel, duly instructed.

5. Mr.C.R.Prasanan, learned counsel for the petitioner would contend that in O.S.No. 701 of 2006, there is a categorical finding regarding the validity of the settlement deed said to have been executed by the father of the plaintiff in favour of the first defendant. Once a settlement deed is found to be true, the partition suit will have to be rejected. Therefore, the Trial Court was not right in dismissing the application. The learned counsel would also submit that the suit itself is an abuse of process of Court.

6. Contending contra, Mr.S.L.Mouli, learned counsel for the first respondent would submit that the suit cannot be termed as abuse of process of court as the suit itself was filed on 18.07.2012 prior to the judgment in O.S.No. 701 of 2006. He would also submit that the suit in O.S.No. 701 of 2006 has been dismissed and the defendant in the said suit namely, the

plaintiff in partition suit that is O.S.No. 1377 of 2012 has no means to challenge the finding regarding the settlement deed in the said suit. Therefore, the said finding cannot be termed as resjudicata. I have considered the rival submissions.

7. I am of the considered opinion that the conclusion of the Trial Court that the issue as to whether the finding in O.S.No. 701 of 2006 regarding the validity of the settlement deed would operate as resjudicata or not will have to be tested only after Trial in the peculiar circumstances of this case cannot be faulted with. Though there is a finding regarding the validity of the settlement deed, the suit in O.S.No. 701 of 2006 has eventually been dismissed, depriving the chance to the plaintiff in O.S.No. 1377 of 2012 to question the said finding.

8. I am unable to agree with the contention of the Mr.C.R.Prasanan that the suit is an abuse of process of Court, since the suit itself was filed prior to the judgment in O.S.No. 701 of 2006. I, therefore, see no reason to interfere with the order of the Trial Court. Therefore, this Civil Revision Petition fails and it is accordingly dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

The II-Additional District Munsif Court,
Coimbatore.

+lccto Mr.C.R.Prasanan, Advocate Sr.No.25218

C.R.P.No. 1466 of 2018
in
C.M.P.No. 7820 of 2018

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rr ii (10/09/2020)

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