



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.No.800 of 2019

and

CMP.No.5263 of 2019

[Video Conferencing]

1.K.Vijayalakshmi

2.Prasanna

3.Sujatha

4.Saritha

5.Aswini

6.Lothammal

7.Soban Babu

8.IndumathiPetitioners/Petitioners/Defendants

Vs.

J.AsokanRespondent/Respondent/Plaintiff

Prayer :-

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decree made in I.A.No.364 of 2017 in O.S.No.42 of 2014 on the file of the District Munsif Court, Gudiyattam, Vellore District, dated 14.12.2018.

For Petitioners : Mr.K.A.Ravindran

For Respondents : Mr.V.Raghavachari

ORDER

The present Civil Revision Petition has been filed as against the order dated 14.12.2018 made in I.A.No.364 of 2017 in O.S.No.42 of 2014 on the file of the District Munsif Court, Gudiyattam, Vellore District.



2.The respondent herein as plaintiff has filed the suit in O.S.No.42 of 2014 for declaring the plaintiff's right to use the 'A' schedule property as cart track to reach and enjoy the property mentioned in the 'B' schedule. The suit is also for consequential injunction restraining the defendants and their men from destroying the channel and cart track situated in the 'A' schedule and for mandatory injunction directing the defendants to revive the channel and cart track situated in the 'A' schedule property as shown in the plaint plan, if the same is destroyed by the defendants.

3.The revision petitioners are the defendants in the suit in O.S.No.42 of 2014. During the pendency of the suit, the revision petitioners filed an Interlocutory Application in I.A.No.364 of 2017 under Order 6 Rule 16(c) CPC. At this juncture, it would be appropriate to extract the said provision:

"16.Striking out pleadings - The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading -

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court."

4.The aforesaid provision is meant for expunging or deleting or amending any portion in the pleading and not to strike out the plaint or written statement as a whole. Whenever the Court finds that some statements are made that are unnecessary, scandalous, frivolous, vexatious or which may tend to prejudice, embarrass or delay the fair trial of the suit or such statements are found to be made to abuse the process of Court, it is open to the Court to strike out the pleadings. The provision cannot be extended to strike out the plaint as a whole or to reject the plaint. It is open to any of the defendants to file an application under Order 7 Rule 11 CPC which is specifically meant for rejection of the plaint. De hors Order 7 Rule 11 CPC, there is no corresponding provision available to strike out the plaint as a whole or to put an end to the litigation.

5.In the present case, the contention of the revision petitioners in the application filed under Order 6 Rule 16(c) CPC to strike out the pleading is that a suit was earlier filed by the respondent herein for partition and that the plaint in the previous suit was rejected by an order dated 24.10.2016. It is not known on what ground the plaint in the suit for partition was rejected. However, the rejection of plaint does not even preclude the plaintiff to file another suit on the same cause of action or to represent the plaint



before appropriate forum. Further, it is admitted that the earlier suit was for partition. Though the present suit is for declaration, the declaratory relief is only relating to the right of easement. Therefore, the cause of action for filing the suit for declaration is entirely different and quite opposite to the claim for partition.

6. Thus the Trial Court has rightly dismissed the petition as not maintainable. Further, this Court is unable to see any substance in the grounds raised in the Civil Revision Petition or in the submissions made by the learned counsel for the revision petitioners. Therefore, the Civil Revision Petition stands dismissed. Since the suit is of the year 2014 and is pending for more than 6 years, the Trial Court is directed to expedite the Trial and complete the proceeding within a period of six months from the date of receipt of a copy of this order. Connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

pgp

To

The District Munsif,
Gudiyattam, Vellore District

+1cc to Mr.V.Raghavachari, Advocate SR.No.59861

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RG (CO)

GMV (08/12/2021)