



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.07.2021

Pronounced on : 16.08.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P. (MD).No.899 of 2020 and

CMP(MD).No.5881 of 2020

WEB COPY

1.Sarojam
2.Nallasivam
3.Arulmony
4.Arunagiri

: Petitioners / Appellants / Petitioners
Plaintiffs

Vs.

Nagendran (died)

1.Ramany
2.Rama
3.Indirajith

: Respondents

Additional respondents 2 to 4 in CMA/
Non parties in I.A / Non parties in O.S.
(legal representatives of the deceased
defendant in O.S)

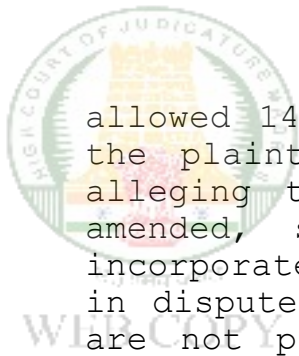
PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to against the Judgment and decree dated 24.08.2020 of the learned Subordinate Judge, Kuzhithurai, made in CMA.No.4 of 2014, confirming the order and decreetal order dated 04.08.2011 on the file of the learned II Additional District Munsif, Kuzhithurai in I.A.No.446 of 2010 in O.S.No.761 of 2004 on this file.

For petitioners : Mr.K.N.Thambi
For R1 to R3 : Mr.G.Ramanathan

O R D E R

The Civil Revision is directed against the Judgment passed in CMA.No.4 of 2014, dated 24.08.2020 on the file of the Subordinate Court, Kuzhithurai, confirming the fair and decreetal order passed in I.A.No.446 of 2010 in O.S.No.761 of 2004, dated 04.08.2011 on the file of the II Additional District Munsif Court, Kuzhithurai, dismissing the petition filed under Order 9 Rule 9 CPC.

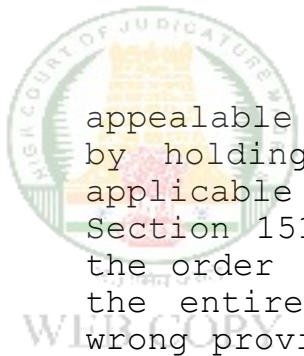
2.The revision petitioners are the appellants / plaintiffs and they have filed the above suit in O.S.No.761 of 2004 for demarcation and for permanent and mandatory injunction. After filing of the Commissioner's report, the plaintiffs have filed a petition in I.A.No.51 of 2007 for amending the plaint to mention the correct extent of the "A" and "B" Schedule properties and the same was



allowed 14.03.2007. It is also not in dispute that subsequently, the plaintiffs have filed another petition in I.A.No.27 of 2010 alleging that the description of the property was left un-amended, sought to amend the description of the property to incorporate the extent of two schedule properties. It is also not in dispute that since the plaintiffs counsel have stated that they are not pressing the said application, the said application was ordered to be dismissed as not pressed on 05.10.2010. Thereafter, the plaintiffs have filed the petition in I.A.No. 446 of 2010 to restore the petition in I.A.No.27 of 2010, which was dismissed as not pressed, alleging that the petition was dismissed as not pressed due to the inadvertence of their Advocate. The respondents have filed their counter opposing the petition and the learned District Munsif, after enquiry, has passed an order on 04.08.2011 dismissing the said petition. Aggrieved by the said order of dismissal, the plaintiffs have filed an appeal in CMA.No.4 of 2014 and the learned Subordinate Judge, Kuzhithurai, has passed the impugned Judgment on 24.08.2020 dismissing the appeal. Challenging the dismissal of the appeal, the plaintiffs have come forward with the present revision.

3.The learned District Munsif, by observing that the plaintiffs by filing the petition after petition, have been dragging on the suit, dismissed the petition. But, whereas the learned Appellate Judge by observing that the petition to restore the petition, which was dismissed as not pressed cannot be filed under Order 9 Rule 9 CPC and it can only be filed under Section 151 CPC and that since the present application could be taken as that it was filed under Section 151 CPC and not under Order 9 Rule 9 CPC, no appeal will lie under Order 43 CPC and as such, the appeal itself is not maintainable, dismissed the appeal.

4.No doubt, the Appellate Judge, has rightly applied the Judgment of the Hon'ble Supreme Court reported in ***Jet Ply Wood Private Ltd., and another Vs. Madhukur Nowlakha and others 2006(3) SCC 699*** and gave a finding that the provisions of Order 9 Rule 9 CPC is not applicable to the petition filed for restoring the petition, which was dismissed as not pressed. But, the learned counsel for the revision petitioners would submit that after dismissal of the petition in I.A.No.446 of 2010, dated 04.08.2021 by the learned District Munsif, the plaintiffs have filed the revision before this Court in CRP(MD).SR.No.26213 of 2012, but the Registry had returned the same questioning the maintainability of the revision, in view of the availability of the appeal remedy, before the Appellate Court against the order of dismissal of the petition filed under Order 9 Rule 9 CPC and that therefore, the plaintiffs have no other option but to file the CMA invoking the Order 43 CPC. Since the plaintiffs have filed the petition in I.A.No.446 of 2010 under Order 9 Rule 9 CPC, the Registry has rightly raised the query about the maintainability of the revision, since the order of dismissal under Order 9 Rule 9 CPC is the



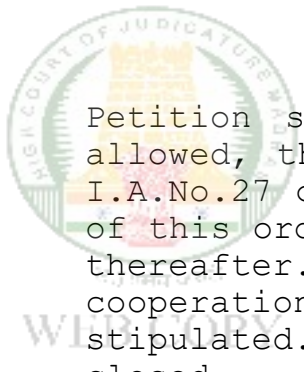
appealable order under Order 43 CPC. Similarly, the Appellate Court by holding that the provisions of Order 9 Rule 9 CPC is not applicable and the petition could be taken as if it was filed under Section 151 CPC, has rightly held that no appeal will lie against the order dismissing the petition filed under Section 151 CPC. So the entire problem arose because of the plaintiffs in quoting a wrong provision of law. No doubt, mere quoting of a wrong provision of law does not dis-entitle a party from getting a relief, but at the same time, the same assumes importance while filing the appeal or revision and is having the effect of affecting the appellate / revisional Jurisdiction. As rightly contended by the learned counsel for the respondents, since the Civil Miscellaneous Appeal itself was declared as not maintainable, no revision will lie against the dismissal of the Civil Miscellaneous Appeal.

5.No doubt, as rightly pointed out by the the learned counsel for the revision petitioners, the respondents in their counter statement filed in I.A.No.27 of 2010, have stated that in case if the Court comes to the conclusion that the petition is liable to be allowed, the same may be allowed with the heavy cost. Even before this Court, the learned counsel for the respondents would submit that if this court decides to allow the petition, heavy cost may be imposed.

6.As already pointed out, as per the Commissioner's report, the plaintiffs have amended the plaint and incorporated the extent shown by the Commissioner in the body of the plaint, but according to the plaintiffs, the amendment was not done in the description of the property and that is why they were forced to file the petition in I.A.No.27 of 2010. As rightly contended by the learned counsel for the revision petitioners, the plaintiffs in I.A.No.27 of 2010 have sought for amendment to correct the extent shown in two items of the properties and as such there was no chance or occasion for them to not press the petition and that their counsel have not pressed the petition only by inadvertence.

7.Considering the entire facts and circumstances and in the interest of justice, this Court is constrained to exercise its power under Article 227 of the Constitution of India and to allow the petition in I.A.No.446 of 2010 for restoring the amendment petition in I.A.No.27 of 2010, but at the same time, considering the fact that the suit is pending from 2004 onwards and also observations of the learned Munsif that the plaintiffs have been dragging on the matter, this court is also of the view that the plaintiffs must be mulcted with heavy costs.

8.In the result, the Civil Revision Petition and consequently the petition in I.A.No.446 of 2010 will be allowed on payment of cost of Rs.10,000/- (Rupees Ten Thousand only) to the respondents on or before, 31.08.2021, failing which, the dismissal of the said



Petition shall stand dismissed. In case if the petition is allowed, the trial Court is directed to dispose of the petition in I.A.No.27 of 2010 within 10 days from the date of receipt of a copy of this order and dispose of the suit within a period of two months thereafter. Both the parties are directed to extend their fullest cooperation to dispose the petition and suit, within the time stipulated. Consequently, the connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1. The Subordinate Judge, Kuzhithurai.
2. II Additional District Munsif, Kuzhithurai.

+1 CC to M/s.K.N.THAMPI, Advocate (SR-26475[F] dated 17/08/2021)

Pre-delivery order made in
C.R.P. (MD).No.899 of 2020 and
CMP(MD).No.5881 of 2020
16.08.2021

RS (17.08.2021) 4P 4C