



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P(MD)No.1861 of 2017

1.Pappa @ Irudayamary

2.Arulsamy ... Petitioners/Petitioners/Plaintiffs
Vs.

1.G.Ravikumar
2.A.Savarimuthu
3.S.Ramesh

... Respondents/Defendants

PRAYER:- Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the order passed in C.R.19 Regd No.1692 of 2017 in Unregd O.S.No. of 2017 dated 03.07.2017 on the file of the District Munsif Court, Nilakkottai and to number the suit and to take the same on his file.

For Petitioner : Mr.T.Selvan

For R1 and R2 : Mr.S.I.A.K.Bagedur Sha

For R3 : No appearance

ORDER

The plaintiffs are the revision petitioners before this Court challenging the order passed in C.R. 19 Regd No.1692 of 2017 in an Unregistered O.S.No. of 2017 on the ground that the learned Judge had dismissed the suit filed by him without numbering the same.

2.The facts in brief are as follows:-

(i) The plaintiffs/revision petitioners had filed a suit for declaration that the sale deed dated 10.02.2015 executed by power agent of the defendants is null and void and for consequential injunction restraining the respondents / defendants from further alienating or encumbering the suit property and creating the third party interest and for an injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property.



(ii) The first plaintiff and his adopted parents one Santhiagu Servai and his second wife Palaniammal had come over from Malaysia and settled in Dindigul. On 29.06.1964, the aforesaid Santhiagu Servai had purchased the suit property as well as the other properties on 29.06.1964 and from that time, he has been in possession and enjoyment of the said property. On 27.07.1976, the said Santhiagu Servai passed away and thereafter the revenue record transferred in the name of his wife Palaniammal @ Mariammal. She passed away on 27.12.1983 and the revenue record got transferred in the name of the first plaintiff's husband and they have been in possession and enjoyment of the property for over several years. After the demise of the aforesaid persons, the son of the said Santhiagu Servai, the daughter in law of the son of the said Santhiagu Servai and her relatives started interfering with their peaceful possession and enjoyment of the suit property. They have also instituted the suits in O.S.No.97 of 2014 and O.S.No.6 of 2014 before the Sub Court, Nilakottai and O.S.No.123 2014 before the Sub Court, Dindigul. It was the power agent of the defendants who had been prosecuting the proceedings. While so, the power agent of the defendants had created two sale deeds, with the intent of grabbing the property and these sale deeds are sought to be set aside.

(iii) The suit was filed into Court on 15.06.2017. The plaint was returned to state as to how the suit was maintainable under Section 12 and Order 2 Rule 2 CPC. Once again, it was returned on 19.06.2017 on the ground that the cause of action for the suit in O.S.No.97 of 2014 and the instant suit is barred by Section 12 of CPC. The learned Judge on the basis of the pleadings has been returning the suit on the ground of maintainability of the suit in the light of the institution of the other two suits. Finally by order dated 03.07.2017, the suit has been rejected in CR stage. Challenging the same, the plaintiffs are before this court.

3.Heard the learned counsel appearing on either side and perused the records.

4.The learned Judge has failed to appreciate that the ground on which the suit has now been rejected are the grounds which may be taken by the defendant once he entered appearance. While performing the ministerial duty of numbering the suit, the Judicial Officer has to only look into the fact as to whether the suit is properly valued, the pleadings are in conformity with the Code of Civil Procedure, whether a cause of action has been pleaded, etc. The Judicial Officer cannot proceed to consider the suit on merits. Such an appreciation can be done only after the suit is numbered and the Judicial Officer considers the plaint on the judicial side. The Court cannot step into the shoes of a defendants counsel at the stage of numbering the plaint.



5.In these circumstances, this Civil Revision Petition is allowed and the learned District Munsif, Nilakkottai is directed to number the plaint. No costs.

WEB COPY

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

cp

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1.The District Munsif,
Nilakkottai.
- 2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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MGJ(28.01.2022) 3P 4C