



WEB COPY



CRP No.2763 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2022

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.2763 of 2016
and C.M.P.No.14161 of 2016

S.Julie

..Petitioner

Vs.

1.Mary Francis @ Blampain Lally
Rep. by General Power of Attorney
John Mahendran.

2.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai – 600 003.

3.The Health Officer,
City Health Office,
Public Health Department (Birth & Death Unit)
New Zone – V, Corporation of Chennai.
Rippon Buildings,
Chennai – 600 003...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the judgment and decree dated 08.08.2016 in I.A.No.5744 of 2016 in O.S.No.491 of 2015.

For Petitioner : Mr.A.Abdul Rahman

For Respondents : No appearance



CRP No.2763 of 2016

WEB COPY

ORDER

The civil revision petition has been filed as against the fair and decreetal order dated 08.08.2016 passed in I.A.No.5744 of 2016 in O.S.No.491 of 2015 on the file of the XI Assistant Judge, City Civil Court, Chennai, thereby dismissing the petition filed for rejection of plaint.

2. The first respondent filed a suit to cancel the birth certificate issued in favour of the third defendant by the first and second defendants in Registration No.2014/05/061/000001/0 as it does not correlate or tally with the order passed by the XX Metropolitan Magistrate's Court, Chennai, on 31.12.2013

3. The first defendant contested the suit as follows;

“I. The order passed by the Trial Court is against law and probabilities of the case.

II. The Trial Court failed to see that in the entire plaint, the Plaintiff has never alleged that her right is affected in any manner whatsoever, so as to seek a declaration of Birth Certificate issued in favour of the petitioner/defendants by the 2nd respondent herein, is Null and Void.



III. The Trial Court failed to see that even as per the admitted pleadings made in the plaint, the plaintiff has not averred anything about the jeopardy of her rights due to the availability of the Birth Certificate issued to the petitioner/defendant.

IV. The Trial Court failed to see that already a suit for partition is filed between the petitioner & 1st respondent in O.S.No.587 of 2014 and the same is pending and in the said suit, the 1st respondent/plaintiff has denied the share of the petitioner/defendant and if at all the 1st respondent/plaintiff denies the share of the petitioner/defendant in the estate of R.Suresh that can be agitated in the partition suit.

V. The Trial Court failed to appreciate the scope under Section 34 of the Act, that Section 34 clearly contemplates that only in the event of any person having a right to declare her personal right in the immovable properties or her status by the other side. Hence even if the 1st respondent/plaintiff wants to maintain the suit, she ought to have sought a relief of declaring that she is the lone surviving legal heir to Mr.R.Suresh and for a consequential relief.

VI. The Trial Court has properly appreciated the scope of Order VII Rule 11 that the Trial Court has to only go through the plaint, but miserably failed to properly appreciate the fact that in the entire pleading, the plaintiff



has not averred anything about the declaration of her right or her right is infringed because of the existence of the document. When the said pleading is not available in the plaint, the 1st respondent/plaintiff cannot maintain such a suit. As per the judgment rendered by the High Court, Jammu & Kashmir, as reported in 1984 AIR (J&K), Page 24, it is clear that seeking a relief that the defendant is not a permanent resident of State of Jammu & Kashmir, will not be a Civil nature as contemplated under Section 9 of C.P.C.

VII. The Trial Court failed to see that relief sought by the 1st respondent/plaintiff for declaration that the Birth Certificate issued by the Authorities in favour of the petitioner/defendant is not of the Civil Right as contemplated under Section 9 of C.P.C.

VIII. The Trial Court erred in not accepting the contention raised by the petitioner/1st defendant that the present suit is not fit in the provision of Section 34 of the Specific Relief Act.

IX. The Trial Court has not properly appreciated the scope that the suit negative and the relief of declaration is not maintainable.”

4. The third defendant filed a petition for rejection of plaint on the ground that the birth certificate issued in favour of the third respondent for



specimen character by the Corporation authorities. Further raised that the prayer sought for in the present suit does not fit in any of the provisions contemplated under Section 34 of the Specific Relief Act. The said provision under Section 34 of the Specific Relief Act contemplates for granting declaratory decrees, it is discretion for the Court to grant decree in favour of the person who claims only about possession of an legal character of any right or to any property against a person who denies the right. Therefore, the first respondent has not filed a suit for declaration, as he has filed suit only to cancel the Birth Certificate issued in favour of the third defendant. However, the trial Court, without considering the written statement filed by the first defendant, had dismissed the petition.

5. As stated supra, the first defendant cancelled the Birth Certificate issued in favour of the third respondent, which is under challenge in the suit and subsequently, issued fresh Birth Certificate in favour of the third respondent as per the order passed by the XX Metropolitan Magistrate Court, Chennai, dated 31.12.2013. Therefore, the prayer sought for in the suit itself has become infructuous and the plaint is liable to be rejected.

6. In view of the above, the order dated 08.08.2016 passed in I.A.No.5744 of 2016 in O.S.No.491 of 2015 on the file of the XI Assistant



CRP No.2763 of 2016

Judge, City Civil Court, Chennai, to reject the plaint in O.S.No.491 of 2015 is

hereby rejected. Accordingly, the civil revision petition stands allowed. No

costs. Consequently, connected miscellaneous petition is closed.

06.12.2022

Speaking/Non-speaking order

Index : Yes/No

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To

The XI Assistant Judge, City Civil Court,
Chennai



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CRP No.2763 of 2016

G.K.ILANTHIRAIYAN.J.

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CRP.No.2763 of 2016

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