



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2022

CORAM:

THE HON'BLE Mr. JUSTICE N.SESHASAYEE

CRP.No.1900 of 2020

1.Anandan (deceased)

..1st Petitioner/Plaintiff

2.Kuppu

3.Mari

4.Rajambal

5.Ponnamalai

6.Rajapuchpam

7.Valarmathy

...Petitioners 2 to 7/

Legal Representatives of deceased
1st Petitioner

Versus

Durai @ Subbarayan

...Respondent/Defendant

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 03-06-2020 and made in Review Application No.3 of 2018 filed to review the Order and Decretal Order dated 03-07-2018 and made in Unnumbered A.S. of 2018 on the file of the Hon'ble Principal Sub Judge at Puducherry preferred as against the Order and Decretal Order dated 03-04-2017 and made in I.A.No.443 of 2011 in O.S.No.1174 of 2010 on the file of the Hon'ble I Additional District Munsif's Court at Puducherry.

For Petitioners : Mr.S.Mahimai Raj

For Respondent : No appearance

O R D E R

The Revision Petitioner are the plaintiffs in O.S.No.1174 of 2010 which they have laid for declaration of title and for other allied relief. In this, the defendant has taken out an Application in I.A.No.443 of 2011 under Order 7 Rule 11 CPC for rejecting the plaint. That came to be allowed Vide order of the trial Court dated 03.04.2017 and accordingly, the suit came to be rejected.



2. Since the order rejecting the plaint is a decree, the plaintiff preferred an appeal before the Principal Sub Court, Puducherry. This was not even taken on file on the ground that the order rejecting the plaint can only be challenged in Revision but, not in appeal, since the order is not a decree.

3. To review the same, the plaintiffs/appellants/revision petitioners took out a Review Application in Rev.A.No.3 of 2018 and that came to be dismissed Vide order dated 03.06.2020. This is now in challenge.

4. Heard, the learned counsel for the Revision Petitioner and also perused the documents.

5. Notice has been served on the respondent. However, he did not enter appearance and his name is also printed in the cause list.

6.1 This Court finds that the first Appellate Court Judge has fundamentally erred in construing that order rejecting a plaint is not a decree.

6.2 This is disappointing more so because the first Appellate Court refers to the definition of the "decree" under Section 2(2) of the CPC., It reads :

2. Definitions :-

(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the right of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of the plaint and the determination of any question within Section 144, but shall not include -

(a)
.....

(b)
.....

It appears that though the Court refers to Section 2(2) CPC., it has not bestowed care to read it. It is this misconception that was sought to be corrected through an attempt taken out by the Revision Petitioner in preferring an



application for review, but that ended in vain. Necessarily, this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution has to interfere with the said order of the learned First Appellate Court to secure to the revision petitioners their procedural right of appeal for challenging an order rejecting their plaint.

7.The Principal Sub Judge, Puducherry is directed to take on record the first appeal preferred by the plaintiffs/revision petitioners challenging an order passed in I.A.No.443 of 2011 in O.S.No.1174 of 2010, if the papers are otherwise in order.

8.This Civil Revision Petition is accordingly allowed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Tsg

To

1. The Principal Subordinate Judge,
Puducherry

2. The 1st Additional District Munsif
Puducherry

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.S.Mahimai Raj, Advocate sr 16169.

CRP.No.1900 of 2020

GPL (CO)
SP(23/03/2022)