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C.R.P(NPD)No.3057 of 2021
and CMP.No.21611 of 2021

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(NPD)No.3057 of 2021

and

CMP.No.21611 of 2021

Santha Bai

..Petitioner

Vs.

Muthukumaran

..Respondent

Prayer: Civil Revision Petition filed under Section 115 of CPC., against the unnumbered IA.. of 2021 in AS.No.19 of 2019 returned on 22.10.2021 on the file of the Additional District Judge, Chidambaram.

For Petitioner : Mr.Gururaj for Mr.D.Baskar

For Respondent : Mr.J.Titus Enock for Caveator

ORDER

The petitioner has filed this revision challenging the returns made by the learned Appellate Judge namely, the Additional District Judge, Chidambaram, questioning the maintainability of the application.



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2.The suit in OS.No.186 of 2013 was filed by the respondent, seeking a decree for permanent injunction. The said suit came to be decreed on 22.08.2017. An appeal in AS.No.19 of 2019 has been filed by the petitioner and the same is pending. Contending that pending the appeal, the petitioner came to know that the respondent, who was the plaintiff in the suit had executed a settlement deed in favour of his wife and therefore, he has no title to the suit property, in order to place those documents before the Appellate Court, the petitioner has filed IA.No.94 of 2017 in AS.No.55 of 2017, which is an appeal filed by her against the dismissal of her suit in OS.No.256 of 2011. The said application in IA.No.94 of 2017 is pending.

3.The petitioner has now come up with an instant application, which is not yet numbered, seeking rejection of the plaint in OS.No.186 of 2013 namely, the suit for injunction filed by the respondent herein. The learned Additional District Judge raised the question regarding the maintainability of the application at the appeal stage. The petitioner had represented it with an endorsement. Again, the learned Additional District Judge returned the application, questioning the maintainability and seeking



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the provision of law under which, it has been filed. It is this return, subject matter of challenge in this revision.

4.Mr.Gururaj, learned counsel appearing for the petitioner would vehemently contend that the learned Additional District Judge was not right in returning the application, questioning its maintainability because the application has been filed, seeking to strike of the plaint on the ground that the plaintiff in the suit had not subsisting interest over the property. I do not think, such an application could be maintained at the appeal stage. A rejection of the plaint can be made on certain grounds before a decree is passed in the suit. Once a decree is passed, it is for the party, who had suffered the decree to challenge the decree in the manner known to law. The petitioner has done that and has filed an appeal, which is pending. I do not think, the Court can reject the plaint in the suit, which has been decreed pending an appeal though an appeal said is a continuation of the suit.

5. It is open to the Appellant to produce the documents in the appeal and demonstrate that the respondent / plaintiff had no subsisting



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interest in the property on the date of the suit and seek dismissal of the suit.

The learned District Judge is right in returning the application, questioning its maintainability. Therefore, I do not see any reason to entertain this revision. This civil revision petition therefore, fails and it is accordingly, dismissed. The application in IA.Sr.No.2332 of 2021 stands rejected. No costs. Consequently, connected miscellaneous petition is closed.

6.This rejection will not prevent the Appellant from raising the issue in the appeal. Considering the fact that the appeal is of the year 2017, the Additional District Judge, Chidambaram is directed to dispose of the appeal within a period of six months from the date of receipt of a copy of this order.

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To:-

The Additional District Court,
Chidambaram.



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R.SUBRAMANIAN, J.

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