



CRP (MD) No.2336 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP (MD) No.2336 of 2022
and
CMP (MD) No.11278 of 2022

P.Tiburcuiss ... Petitioner
Vs

S.Emerson ... Respondent

PRAYER: Civil Revision Petition is filed under Section 227 of the Constitution of India, to call for the records relating to the original suit in OS.No.283 of 2021 on the file of the Principal District Court, Kanyakumari at Nagercoil and strike off the same.

For Petitioner : Mr.J.John Jeyakumar
For Respondent :

ORDER

This civil revision petition is filed to strike off the plaint in OS.No.283 of 2021 on the file the Principal District Court, Kanyakumari at Nagercoil.



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2.The suit in OS.No.283 of 2021 is filed by the respondent/ plaintiff claiming compensation of Rs.12 lakh as against this petitioner that he has caused loss to his business and also for a consequential relief of permanent injunction restraining the petitioner from dismantling or demolishing the Kannikai Matha Ice Plant and the machinery installed in the suit schedule property at Kolacheal village. Pending the suit, the respondent /plaintiff has filed an application in IA.No.2 of 2022 seeking certain amendment to the plaint and to the relief sought for in OS.No.283 of 2021. The trial Court dismissed the said application that it is post trial amendment and the petitioner has not satisfied that in spite of his due diligence, he could not raise a plea before the commencement of the trial. Challenging the said order, the respondent filed a petition in CRP(MD)No.1721 of 2022 and this court by order dated 26.10.2022 allowed the said petition.

3.The learned Counsel for the petitioner submits that the petitioner is the sole proprietor of Kannikai Matha Ice Plant and there is no such a partnership agreement dated



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21.04.2003 as claimed by plaintiff and due to old age, the petitioner is intending to close down business. Kannikai Matha Ice Plant is an exclusive property of the petitioner. The petitioner has also filed written statement objecting that the respondent/ plaintiff is not a partner of the Kannikai Matha Ice Plant and no partnership deed was executed on 21.04.2003. Further, the plaintiff has filed the suit based on the xerox of the partnership deed said to have been executed by the plaintiff/ respondent and it is attested by notary public and the defendant/ petitioner and the said partnership deed is not a registered one and it is barred as per the provisions of Section 69(1) of the Partnership Act.

4.The learned Counsel for the respondent submits that the petitioner and the respondent are partners of one Kannikai Matha Ice Plant and they have also entered into a partnership dated 21.04.2003. The petitioner has been paying share in the profits to the respondent, but all of a sudden, he is attempting to close down the said Ice plant behind his back. The petitioner filed a suit in OS.No.36 of 2021 before the learned District Munsif, Eraniel seeking



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permanent injunction restraining this petitioner and his men from trespassing into the suit schedule property.

Pursuant to the orders of this Court, the said suit was transferred to the Principal District Court, Kanyakumari @ Nagercoil for joint trial by the orders of this Court in CRP(MD)No.183 of 2022 dated 23.03.2022 and accordingly it is renumbered as OS.No.169 of 2022 for joint trial. The petitioner has adduced his evidence in his suit. Pending the suit, the respondent /plaintiff has filed an application in IA.No.2 of 2022 seeking certain amendment to the plaint and to the relief sought for in OS.No.283 of 2021. The trial Court dismissed the said application and challenging the said order, the respondent filed a petition in CRP(MD)No.1721 of 2022 and this court by order dated 26.10.2022 allowed the said petition. At this stage the petitioner has filed this petition to strike of the plaint and therefore, this petition is liable to be dismissed.

5.This Court considered the rival submissions and perused the materials placed on record.



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6. The respondent filed the suit in OS.No.283 of 2021 before Principal District Court, Kanyakumari, seeking compensation as against the respondent for causing loss to his business. The petitioner has also filed a suit in OS.No.36 of 2021 before the District Munsif, Eraniel seeking permanent injunction as against the petitioner not to trespass into the suit property Kannikai Matha Ice Plant. Pursuant to the orders of this Court in CRP(MD)No.183 of 2022 dated 23.03.2022, both suits were ordered to be tried together by the learned Principal District Judge, Kanyakumari and the same are now pending. The trial is commenced in OS.No.283 of 2021. The respondent was also examined as PW1 on 23.06.2022. The respondent/plaintiff has also filed an application for amendment to plaint and it was dismissed by the trial Court, which was challenged before this Court in CRP(MD)No.1721 of 2022 and this Court by order dated 26.10.2022 allowed the said civil revision petition.

7. The suit in OS.No.283 of 2021 was filed on 21.12.2021. This petition is filed on 21.11.2022 on the ground that there is no such partnership deed dated



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21.04.2003 between the petitioner and the respondent.

Whether it is executed between the petitioner and the respondent or it is a created one shall be tested only during the trial and at this stage, this court is not inclined to entertain this petition. Accordingly, this petition stands dismissed. No costs.

02.12.2022

Index: Yes/No.

dsk

To

The Principal District Judge,
Kanyakumari at Nagercoil.



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B. PUGALENDHI , J.

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