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C.R.P. No.1677 of 2019
C.M.P. No.10854 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2023

CORAM: JUSTICE N.SESHASAYEE

C.R.P. No.1677 of 2019 and
C.M.P. No.10854 of 2019

1.Pakkiyam
2.Balamurali Krishna
3.Jayaselvi (alias) Selvi
4.Punniyakodi
5.Chandrasekar
6.Jayachitra

... Petitioners

Vs.

Santhammal

... Respondent

PRAYER: The Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the judgment and decretal order dated 08.11.2018 passed in C.M.A. No.5 of 2014 by the learned Principal Sub Judge, Tindivanam, in reversing the fair and decretal order in I.A. No.36 of 2014 in O.S. No.302 of 2013 dated 14.03.2014 passed by the Principal Munsif Judge, Tindivanam.

For Petitioners : Mr.S.Seenuvasan

For Respondents : Mr.B.S.Mithra Nisha
for Ms.V.Srimathi

ORDER



C.R.P. No.1677 of 2019
C.M.P. No.10854 of 2019

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The present civil revision petition arises out of an order passed in C.M.A. No.5 of 2014 on the file of the Principal Sub Court, Tindivanam. The backdrop to this case arises in the following way:

- The revision petitioners herein have laid a suit in O.S. No.302 of 2013 for bare injunction. In the said suit, the defendant took out I.A.No.36 of 2014 under Order VII Rule 11(a) and (d) of CPC. Vide its order dated 14.03.2014, the trial court held in favour of the defendant and rejected the plaint.
- Challenging the said order, the plaintiffs have preferred C.M.A. No.5 of 2014 before the Principal Sub Court, Tindivanam and the appellate court dismissed it and this is now under challenge in this revision.

2. During the course of hearing, Ms.Mithra Nisha, learned counsel appearing for the respondent submitted that in fitness of things, the plaintiffs ought to have filed a regular first appeal under Section 96 of the Civil Procedure Code, since any order rejecting the plaint is a decree within the meaning of Section 2(2) CPC. Therefore, the civil miscellaneous appeal preferred by the plaintiffs



C.R.P. No.1677 of 2019
C.M.P. No.10854 of 2019

treating the order rejecting the suit by the trial court as an appealable order is impermissible. This court finds merit in the said submission.

3. Now the only option open to the revision petitioners is to approach the first appellate court with a regular first appeal, if they are so desirous. In view of the same, nothing survives for consideration in this revision. Accordingly, the civil revision petition is dismissed. However, there is no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

4. As and when the appeal is filed, the first appellate court is required to approach the civil code as per law.

19.06.2023

Asr

To
The Principal Subordinate Judge, Tindivanam.

N.SESHASAYEE, J.,



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