



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2023

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.No.1826 of 2022

P.Senthilkumar

... Petitioner

VS.

R.Saraswathi

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the final order and order dated 27.04.2022 in I.A.No.3 of 2022 in O.S.No.145 of 2014 on the file of Subordinate Judge, Dharapuram.

For Petitioner : Mr.K.Sudhakar

For Respondent : Mr.A.Saravanan

ORDER

This Civil Revision Petition has been filed to set aside the order dated 27.04.2022 passed in I.A.No.3 of 2022 in O.S.No.145 of 2014 by the learned Subordinate Judge, Dharapuram.



2. Originally the respondent/plaintiff has filed a suit in O.S.No.145 of 2014 on the file of the Sub Court, Dharapuram for the relief of partition and other consequential relief against the defendants 1 and 2. Thereafter in the year 2018, the defendant 3/revision petitioner and the defendant 4 were impleaded in the said suit. The defendant 3 who is the revision petitioner has filed an application to reject the plaint in I.A.No.3 of 2022 under Order VII Rule 11 CPC. The said application was dismissed on merits by the Trial Judge with a cost of Rs.3,000/- invoking section 35A of the Code of Civil Procedure. Challenging the said finding, the third defendant preferred this revision.

3. Heard Mr.K.Sudhakar, learned counsel for the petitioner and Mr.A.Saravanan, learned counsel for the respondent.

4. When the matter was heard, learned counsel for the petitioner submits that the revision petitioner was impleaded as the third defendant in O.S.No.145 of 2014 in the year 2018 and thereafter, defendants 1 and 2 died and their legal heirs were impleaded and hence, delay occurred. However, the said delay was not occurred due to the contact of this revision



petitioner i.e., filing of an application to reject the plaint under Order VII Rule 11 CPC. Despite the same, the Trial Judge dismissed the said application and awarded a cost of Rs.3,000/- by observing that only to drag the proceedings, the revision petitioner has filed the said application, which observation is an erroneous one and hence, prayed to set aside the order dated 27.04.2022 with regard to the payment of the cost.

5. Learned counsel for the respondent raised objection stating that the suit is of the year 2014 and the revision petitioner who is the third defendant in the suit has unnecessarily dragging on the proceedings by filing an application to reject the plaint under Order VII Rule 11 CPC and causing delay.

6. On perusal of the records, it reveals that the revision petitioner was impleaded as the third defendant in the year 2018. Despite he was impleaded in the year 2018 itself, he chosen to file an application to reject the plaint under order 7 Rule 11 of CPC only in the year 2022, after a lapse of almost four years. However, the same was rejected by the Trial Judge by imposing cost of Rs.3,000/- observing that the application filed by the



revision petitioner is a vexatious one. However, the defendants are entitled to invoke Order VII Rule 11 CPC to file an application to reject the plaint, under law. So the rights conferred based on the statutory provisions cannot be taken away, even though there is a delay in filing such an application. Not only because of this revision petitioner, the proceedings got delayed, but also due to the fact that some of the defendants also died.

7. After giving due consideration to the aforesaid facts, compensatory cost of Rs.3,000/- ordered to be paid on 27.04.2022 under section 35A of the Code in I.A.No.3 of 2022 in O.S.No.145 of 2014 by the learned Subordinate Judge, Dharapuram is hereby set aside and all other findings are confirmed. However, both the parties are directed to cooperate with the trial proceedings. Accordingly, this Civil Revision Petition is allowed. No costs.

06.03.2023

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Index: Yes/No

Speaking Orders/Non-Speaking Orders

Neutral Citations : Yes/No



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To

1. The Subordinate Judge,
Dharapuram

T.V.THAMILSELVI, J.



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