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CRP No.2816 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

Civil Revision Petition No.2816 of 2023

Pathipooranammal

...Petitioner

Vs.

1. S.Parvathi
2. S.Raman
3. S.Jayalakshmi
4. S.Babu
5. K.Sudha
6. S.Venkatesan alias S.Jayakumar
7. S.Vijayakumar
8. J.Loganathan
9. J.Sankaran
10. Vasantha
11. S.Muralidharan

...Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to call for the entire records in O.S.No.392 of 2019 and set aside the order dated 14.02.2023 passed by the District Munsif cum Judicial Magistrate court, Gummidipoondi.

For Petitioner : Mr.P.V.Muralidhar

ORDER

The present petition has been filed to call for the entire records in O.S.No.392 of 2019 and set aside the order dated 14.02.2023 passed by the District Munsif cum Judicial Magistrate Court, Gummidipoondi.



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2. The brief facts of the case are as follows:-

The petitioner, who is the plaintiff has preferred O.S.No.392 of 2019 seeking partition and other consequential reliefs against the respondents / defendants. The written statements were filed by the respondents / defendants. The said suit was dismissed by the court below, as per the check slip, on the ground of limitation, on 14.02.2023. As against which, the present Revision has been filed.

3. The learned counsel for the petitioner would submit that the court below has not assigned any valid, proper and cogent reasons for dismissing the suit on the ground of limitation. When it is well settled in Law that the decree shall contain the operative portion of the judgment and the limitation is a question of law and fact, but, in the present case, there is no such operative portion, which is against law.

4. Lastly, the learned counsel for the petitioner submits that the court below ought to have framed the issue of limitation as a preliminary issue and not under the check slip. Further, the court below did not offer an opportunity of advancing oral arguments, which amounts to violation of the principles of natural justice, thereby pleaded to dismiss the order passed by the court below.

5. Heard the learned counsel for the petitioner and perused the documents placed on record.



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6. According to the petitioner / plaintiff, originally the suit has been filed as early as on 19.05.2015 on the file of learned District Munsif, Ponneri and was numbered as O.S.No.171 of 2015. After notice, the respondents / defendants entered appearance and filed written statement on 29.06.2018.

7. It is seen from the records that the learned Principal District Judge, Thiruvallur on the annual inspection held on 08.12.2017 has issued instructions to issue check slip making certain queries about the same. Thereafter, on 28.09.2018, the learned District Munsif, Ponneri also sent notice of hearing calling for a reply to the check slip from the petitioner / plaintiff and seeking to furnish geneology chart in triplicate and had put a specific query regarding maintainability of the suit on the question of barred by limitation. Further, the records also reveal that the learned counsel for the petitioner also filed a reply to the check slip as early as on 07.11.2022 along with geoneology report. Thereafter, several hearings have taken place and finally by a Judgment and decree dated 14.02.2023 in O.S.No.392 of 2019, the learned District Munsif cum Judicial Magistrate, Gummidipoondi, in one line, dismissed the suit on the question of barred by limitation.

8. It is unbecoming for the court below to pass such Judgment. Issues have to be framed and trial has to commence and evidence to be let



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in, without all these things, a one line cryptic order dismissing the suit on the question of limitation, is unsustainable.

9. It is pertinent to point out that if the suit is barred by limitation, the respondents / defendants would have filed appropriate application under Order VII Rule 11 CPC for rejection of plaint on the ground of limitation. A perusal of written statement filed by the respondents / defendants would reveal that such stand have not been taken by the respondents or taken any proceedings under Order VII Rule 11D CPC. When the case is at the stage of framing of issues, the court below passing a one line order is not acceptable.

10. It is relevant to note that the court below can raise the issue of limitation, if it so feels, though not raised by the respondents / defendants. Only after proper trial and letting in evidence, passing of appropriate Judgment would arise. As far as the present case is concerned, the Judgment passed by the learned District Munsif cum Judicial Magistrate, Gummidipoondi in O.S.No.392 of 2019 dated 14.02.2023 is perverse and liable to be set aside.



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In result, the present Revision is allowed and the Judgment passed by the learned District Munsif cum Judicial Magistrate, Gummidipoondi in O.S.No.392 of 2019 dated 14.02.2023 is set aside. The trial court to dispose the suit as expeditiously as possible. No costs.

13.09.2023

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order

To

1. The District Munsif cum Judicial Magistrate

Gummidipoondi

2. The District Munsif,

Ponneri



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V.BHAVANI SUBBAROYAN J.

ssd

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