



WEB COPY



CRP No.3577 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.3577 of 2017
and
C.M.P.No.16849 of 2017

Kalyani

... Petitioner

Versus

- 1.Thiruvenskadam
- 2.Chelladurai
- 3.Ponnusamy Devar
- 4.Veerapandian
- 5.Thiyel Nayaki
- 6.Balu
- 7.Sundar
- 8.Balasubramaniam
- 9.Kannan
- 10.Thambidurai

...Respondents

Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 13.06.2017, passed in I.A. No. 991 of 2016 in O.S. No. 122 of 2016 on the file of the Principal District Munsif Court, Sirkali, by allowing the Civil Revision Petition and allow the said IA filed for rejecting the plaint.

For Petitioner

:

Mr. S.D.S. Phillip

<https://www.mhc.tn.gov.in/judis>



CRP No.3577 of 2017

For R1 : Mr. B. Jawahar
For R2 to R10 : Given up

WEB COPY

ORDER

The petitioner has filed this revision petition to set aside the fair and decreetal order dated 13.06.2017, passed in I.A. No. 991 of 2016 in O.S. No. 122 of 2016 on the file of the Principal District Munsif Court, Sirkali and thereby reject the plaint filed by the plaintiff/first respondent.

2. Heard, Mr. S.D.S. Phillip, learned counsel for the petitioner and Mr. B. Jawahar, learned counsel appearing for the first respondent and perused the materials available on record.

3. The petitioner has challenged the findings made in I.A. No. 991 of 2016 in O.S. No. 122 of 2016. The first respondent herein is the plaintiff, who has filed the suit in O.S. No. 122 of 2016 on the file of the Principal District Munsif Court, Sirkali to declare that already, an oral partition was affected in respect of the suit properties and to declare that B-Schedule property belongs to him and for recovery of possession.



CRP No.3577 of 2017

WEB COPY

4. The contention of the plaintiff is that there was an oral partition held in the Neelamegam family run by paternal grand father Neelamegam in respect of the land of an extent of 30 cents and it was allotted to the share of plaintiff's father Muthusamy. After his demise, the said 30 cents of land was divided by his son Neelamegam as per which land measuring 5 cent (B-Schedule property) was allotted to Muthusamy, who in turn given to his son , the plaintiff herein. The other defendants were also allotted with the 5 cents of land, adjacent to the B-Schedule property mentioned as ABCD in the rough sketch along with the plaint. But the defendants falsely claim right over the property allotted to the plaintiff. It is also stated that already a suit was filed in O.S. No. 302 of 2004 and the same was dismissed. Subsequently, another suit in O.S. No. 97 of 2010 was also filed but no findings was given in favour of the plaintiff in that suit. As on date, there is no findings with regard to the plaintiff's right over the suit property in the earlier suit proceedings. Therefore the present suit is not affected by the principles of *res judicata*, hence he prays for the relief of declaration.

5. After issuance of notice, the 8th defendant filed I.A.No.991 of 2016 under Order VII Rule 11 a & b of the Civil Procedure Code, stating that the



CRP No.3577 of 2017

plaintiff has already filed the suit in O.S.No.302 of 2004 against her husband for bare injunction and the suit was dismissed in the year 2005 on the ground that the plaintiff failed to prove the oral partition. As against the decree and judgment in O.S. No. 302 of 2004, A.S. No. 306 of 2006 was filed. The appellate Court reversed the Judgment of the trial court and therefore, Second Appeal in S.A. No. 66 of 2007 was filed and the same was allowed by this Court and confirmed the findings given by the learned trial Judge. Aggrieved by the same, Special Leave Petition was filed before the Honourable Supreme Court. Thereafter, the plaintiff has filed the suit in O.S. No. 97 of 2010 for declaration of title and possession and the same was rejected by this Court in CRP. No. 2454 of 2011 on the ground that the said suit is a clear case of abuse of process of law.

6. It is further stated that the issues involved in the present suit is already decided in O.S.No.302 of 2004. This is the third suit and the same is barred by Section 11 and 12 of the CPC and also under Order VII Rule (2) of CPC. Already there was a finding with regard to oral partition pleaded by the plaintiff in S.A. No. 66 of 2007. In Paragraph Nos. 14, 15 & 16 of the said judgment, this Court held that there was an oral partition effected in the family of Neelamega Devar. Therefore, the present suit filed by the plaintiff



CRP No.3577 of 2017

is nothing but an attempt to re-agitate the same matter which was the subject matter involved in the earlier suits in O.S. No. 302 of 2004 and O.S. No. 97 of 2007. So, the present suit filed by the plaintiff is an abuse of process of Court and it is an attempt to re-agitate the same issue once again. Hence he prayed to reject the plaint.

7. The said application was strongly objected by the plaintiff by contending that the earlier suit in O.S. No. 302 of 2004 was dismissed and the findings rendered thereon were confirmed in S.A. No. 66 of 2007. He also contends that the dispute with respect to title of the suit property was not decided in the earlier suit as it was filed only for bare injunction. Therefore, the said findings would not cause res judicata to file the present suit. Further the other suit in O.S. No. 97 of 2010 also dismissed but even in the suit, there was no findings rendered with regard to the right, title and interest over the suit property. Hence, the present suit, as such, is maintainable and prayed to dismiss the application to reject the plaint.

8. On hearing both sides the learned trial Judge elaborately discussed about the earlier suit proceedings in Parr No.7 of the order. It was stated that the earlier suit was filed by the plaintiff for permanent injunction



CRP No.3577 of 2017

and the same was dismissed. Thereafter, in another suit in O.S. No. 97 of 2010, he prayed to declare the right over the disputed property. But the said complaint was rejected in I.A. No. 885 of 2010 against which CRP. No. 254 of 2011 was filed and the same also confirmed by this Court. Now, the plaintiff by including the legal heirs of Neelamegam, filed the present suit. But as per in O.S. No. 302 of 2004 there is a specific observation that the defendant is said to be in possession of the suit property but it has not been properly proved by him. Accordingly, suit was dismissed. Thus, no findings were made, with regard to the title of the property. Therefore, the present suit filed by the plaintiff on respect of the land of an extent of 30 cents is maintainable. Even in the earlier suit proceedings, the disputed property was only in respect of land measuring 5 cents. Therefore, it was held by the trial court that the title has not been declared by any of the Court and the present suit as such is maintainable, accordingly the present suit was dismissed. Challenging the said findings the present revision was filed by the 8th defendant/revision petitioner herein.

9. The learned counsel for the revision petitioner argues that the learned trial Judge failed to take note of the fact that this is the third suit filed by the plaintiff for the same relief, which was already declared by this Court in earlier



CRP No.3577 of 2017

suit. The learned trial Judge did not take note that in the earlier suit proceedings in O.S. No. 302 of 2004 as well as in O.S. No. 97 of 2010 it was held that the suit was an abuse of process of law and rejected it. It was also held that there was no cause of action to institute the suit. Now, the plaintiff is re-agitating the same matter and filing the present suit. But the learned trial Judge without appreciating the earlier suit proceedings, dismissed the application to reject the plaint and is as such it is totally erroneous and prayed to set aside the findings of the Court below.

10. The learned counsel for the first respondent/plaintiff submitted that the plaintiff has filed the earlier suits in respect of 5 cents of land and not the entire extent of 30 cents belongs to his grandfather Neelamegam. The appeal filed before this Court in Second Appeal No. 66 of 2007 was allowed, by specifically holding that the plaintiff has not explained his possession on the date of filing of the suit. Accordingly the earlier suits were dismissed, but so far in those suits, no findings with regard to the relief of declaration was sought. Hence, the learned trial Judge rightly appreciated those facts and dismissed the application to reject the plaint.



CRP No.3577 of 2017

11. Considering both sides submissions and on perusal of the present suit, it is seen that the plaintiff has filed the said suit for a relief of declaration and consequential relief of recovery of possession. In the earlier suit proceedings there was an observation by the first appellate judge, that the father of the plaintiff Muthusamy is one of the sons of Neelamegam and he is also entitled for a share in the property. At the same time another son of Neelamegam namely Ponnaiya sold 10 cents to the wife of the defendant. Now, he is entitled for 10 cents since son of Neelamegam is having only 5 cents, To that effect, there was an observation made in the appeal proceedings. But the earlier suit was dismissed as the plaintiff has not properly proved the possession. However, the tile with regard to the share of plaintiff's father / Muthusamy has not been declared in any of the earlier suit proceedings. Therefore the plaintiff has filed the present suit for declaration and as such it is maintainable. The scope of the Order VII, Rule 11 is to be considered by relying the plaint averments and if it is considered, the present suit is maintainable. The findings of the trial Court needs no interference by this Court. It is made clear that the defendant is entitled to raise all defense before the trial Court.



CRP No.3577 of 2017

12. Accordingly, this Civil Revision Petition is dismissed as devoid of merits and the findings of the learned Principal District Munsif Judge, Principal District Munsif Court, Sirkali, in I.A. No. 991 of 2016 in O.S. No.122 of 2016 is confirmed. Consequently, connected miscellaneous petition is closed. No costs.

17.10.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation:Yes/No
rri

To

- 1.The Principal District Munsif Court,
Sirkali.
- 2.The Section Officer,
VR-Section, High Court of Madras.



WEB COPY



CRP No.3577 of 2017

T.V.THAMILSELVI, J.

rrr

Civil Revision Petition No.3577 of 2017
and
C.M.P.No.16849 of 2017

17.10.2023