

(2010) 08 MAD CK 0203

In the Madras High Court

Case No : Rev. A. No's. 84 to 86 of 2009 and M.P. No's. 1 and 2 of 2009 (in all the Rev. Applns) in C.R.P. No's. 783 and 784 of 2009

Dr. N.R. Prithivirajan and Others

APPELLANT

Vs

K. Shoukath Ali and Others
Dr. N.R. Prithivirajan Vs
K.L. Kirubakaran and Others
K.L. Jaya, K.L. Geetha,
Ranga and V. Devi Vs Rani, Dr. N.R. Prithivirajan, R.
Ravichandran and V. Nabirajan
V. Devi Vs R.
Ravichandran and V. Nambirajan

RESPONDENT

Date of Decision : 12-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2010) 08 MAD CK 0203

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : Sankarasubbu, in C.R.P. Nos. 85 and 86 of 2009 and Party in Person in C.R.P. No. 84 of 2009, for the Appellant; R. Margabandhu, for Annadorai, for the Respondent

Judgement

G. Rajasuria, J.—Animadverting upon the order of this Court dated 3.4.2009 passed in C.R.P. (NPD) Nos. 783 and 784 of 2009 and M.P. Nos. 1 to 3 of 2009, these Review applications are filed.

2. Compendiously and concisely the relevant facts absolutely necessary and germane for the disposal of these review applications would run thus:

One Shoukath Ali-the first respondent herein, as plaintiff, filed the suit O.S. No. 908 of 2007 seeking the following reliefs:

To grant decree in favour of the plaintiff and as against the defendants,

a) permanently restraining the defendants and their men from in any way alienating, encumbering or causing damage to the suit property,

b) granting permanent injunction against the defendants, restraining them, their

men, followers, subordinates, servants, agents, etc from any way interfering with the plaintiff's peaceful possession and enjoyment of the respective schedule of plaintiff schedule properties.

c) directing the defendants to pay costs of this suit to the plaintiff." (extracted as such)

(ii) He also filed before the trial Court the I.A. Nos. 1137 and 1138 of 2007 seeking injunction, however orders were passed dismissing those injunction applications.

(iii) As against the order passed in I.A. No. 1138 of 2007, C.M.A. No. 13 of 2008 was filed by the plaintiff.

(iv) The court passed the order on 5.12.2008 dismissing the CMA, and also ordered that the suit itself should be taken off from the file of the Court, because it was in abuse of process of the Court.

(v) Being aggrieved by and dissatisfied with the said order, two civil revision petitions C.R.P.(NPD). Nos. 783 and 784 of 2009 were filed. This Court, on 3.4.2009 passed order in the said CRPs, the operative portion of which would run thus:

5. In fine, this civil revision petitions are allowed and the order passed by the first appellate Judge in C.M.A. No. 13 of 2008 in I.A. No. 1137 of 2007 in O.S. No. 908 of 2007 and C.M.A. No. 11 of 2008 in I.A. No. 1138 of 2007 in O.S. No. 908 of 2007 respectively on the file of the Additional District Munsif No. 1, Salem, is set aside only in respect of the direction regarding the removal of the plaint from the file of the learned trial Judge. The learned trial Court is directed to restore O.S. No. 908 of 2007 on its file and after restoration, the defendants are entitled to file a petition under Order 7 Rule 11 of C.P.C. for rejection of the plaint. On such filing of the petition, the learned trial Judge is directed to consider the petition filed under Order 7 Rule 11 of CPC by the defendants on merits and dispose of the same in accordance with law, within a period of two months thereafter. No costs.

(vi) Subsequently, the same learned Judge on 13.4.2009, on mentioning, passed the clarificatory order, the operative portion of which would run thus:

3. Under such circumstances, the learned trial Judge is directed to dispose of O.S. No. 908 of 2007 also, in case if the petition under Order 7 Rule 11 of CPC to be filed by the defendants is dismissed, within two months thereafter. The learned Counsel for the revision petitioner further submit that so far the defendants have not filed any petition under Order 7 Rule 11 of CPC. Under such circumstances, the defendants are directed to file the petition under Order 7 Rule 11 of CPC within ten days from today, failing which, the learned trial Judge shall proceed with the suit and dispose of the same within two months thereafter.

3. The present review applications have been filed by the 6th respondent in CRP

No. 783 of 2009-Prithivirajan (Rev. A. No. 84 of 2009), and R2 to R4 and R7 in the CRP No. 783 of 2009 (Rev. A. No. 85 of 2009) and R1 in CRP No. 784 of 2009 (Rev. A. No. 86 of 2009), respectively, setting out various grounds.

4. The party-in-person Prithivirajan and also Mr. Sankarasubbu the learned Counsel for the revision petitioners would make submissions to the effect that earlier while this Court passing the order on 3.4.2009 did not hear the advocate Mr. Tamilarasu for R3, R4 and R7 in CRP No. 783 of 2009 and for R1 in CRP No. 784 of 2009, and without hearing him order was passed.

5. The learned Counsel Mr. Sankarasubbu also would submit that the respondents 2 to 5 in the CRPs, who are petitioners in Rev. A. No. 85 of 2009, were all minors at that time and they attained majority only recently and there is a sinister attempt to grab away their property, as they are orphans virtually, as their parents died unnatural death along ago. As such, without hearing the advocates concerned for R2 to R5 in the CRP, the orders passed earlier have to be recalled and in any event the order passed by this Court on 3.4.2009 is not in consonance with the dictum found enunciated in the Honourable Apex Court's judgment which only the appellate Court adhered to in the CMA.

6. Per contra, the learned Counsel for R1 herein-Shoukath Ali would put forth and set forth his arguments to the effect that after the passing of the orders on 3.4.2009 and 13.4.2009, Shoukath Ali himself filed the application before the lower Court seeking withdrawal of the suit, without any prayer for filing a fresh suit on the same cause of action.

7. Once such a stand has been taken by Shoukath Ali himself, the question of reviewing the orders or getting the earlier orders dated 3.4.2009 and 13.4.2004 modified or recalled does not arise at all.

8. At this juncture, I would like to extract hereunder the operative portion of the order dated 5.12.2008 passed by the learned Sub-Judge, in C.M.A. No. 13 of 2008:

14. In the result, the civil miscellaneous appeal is dismissed and the Original Suit O.S. No. 908 of 2007 on the file of the I Additional District Munsif of Salem is ordered to be removed from the file of the Court. Necessary entries should be made in concerned records.

9. Virtually, this Court while passing the orders earlier on 3.4.2009 and 13.4.2009 thought that the trial Court itself could be approached by the aggrieved defendants by filing an application under Order 7 Rule 11 of CPC for getting the plaint rejected and having that in mind alone the Court passed the said orders and now, those orders alone the petitioners herein want to get it recalled/reviewed.

10. The learned Counsel for R1-Shoukath Ali, who is the plaintiff in the suit, would make a categorical statement that when the plaintiff himself is not willing to carry on with the suit and he wants to virtually not press that suit, there is no

question of any more litigation subsisting on that count.

11. At that time, the learned Counsel for the petitioners/R2 to R9 would submit that the plaintiff wants to escape from the findings given by the appellate Court in CMA. No. 13 of 2008 and that was why he has been attempting to withdraw the suit.

12. I would like to point out that the Court has already gave its verdict relating to the I.As. and regarding that non-granting of injunction relief is concerned, this Court also never gave any verdict as though the plaintiff is entitled to injunction and in such a case, the present Review applicants, namely, Prithivirajan and also R2 to R9 in the CRPs can never be stated to be aggrieved by the plaintiff's attempt to withdraw the suit.

13. The only point for consideration is this. My learned predecessor opined that instead of the appellate Court itself erasing the plaint/suit, the aggrieved parties can go before the trial Court and file application under Order 7 Rule 11 of C.P.C. and as against such order, now the review petitioners take exception and try to argue.

14. In the wake of the categorical submission made by the learned Counsel for R1/plaintiff that the plaintiff himself is not willing to proceed with the suit, then it amounts to the review petitioners getting the remedy here itself and in such a case, I hereby pass order to the effect that the suit shall be deemed to have been removed from the file and nothing more survives in this case and with that the matter is disposed of and in no way the findings already given by the appellate Court would get affected by any of the orders passed by this Court.

The review applications are ordered accordingly. No costs. Consequently, connected miscellaneous petitions are closed.