
(2009) 04 MAD CK 0306

In the Madras High Court

Case No : C.R.P. (NPD) No's. 783 and 784 of 2009 and M.P. No's. 1 to 3 of 2009

K. Shoukath Ali

APPELLANT

Vs

K.L. Kirubakaran and Others

RESPONDENT

Date of Decision : 03-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 7 Rule 11, 11, 151

Hindu Minority and Guardianship Act, 1956 — Section 8(1)

Citation : (2009) 04 MAD CK 0306

Hon'ble Judges : A.C. Arumugaperumal Adityan, J

Bench : Single Bench

Advocate : P. Valliappan, for the Appellant; S. Thamilarasu, for RR 3, 4 and 7 in CRP(NPD) No. 783/2009 and for R1 in C.R.P. No. 784/2009 and Party-in-person, for the Respondent

Final Decision : Allowed

Judgement

A.C. Arumugaperumal Adityan, J.—Heard the learned Counsel appearing for the revision petitioner and party in person (R6-Dr. N.P. Prithivirajan).

2. C.R.P(NPD) No. 783 of 2009 has been directed against the order passed in C.M.A. No. 13 of 2008 on the file of the Court of Principal Subordinate Judge, Salem, which had arisen out of an application I.A. No. 1137 of 2007 was filed under Order 39 Rules 1 and 2 of CPC. C.R.P(NPD) No. 784 of 2009 has been directed against the order passed in C.M.A. No. 11 of 2008 on the file of the Court of Principal Subordinate Judge, Salem. C.M.A. No. 13 of 2008 which had arisen out of an order passed in I.A. No. 1137 of 2008 in O.S. No. 908 of 2007 on the file of the Court of Additional District Munsif No. 1, Salem whereas C.M.A. No. 11 of 2008 had arisen out of an order passed in I.A. No. 1138 of 2007 in O.S. No. 908 of 2007 on the file of the Court of Additional District Munsif No. 1, Salem. Both the applications were filed under Order 39 Rules 1 and 2 and Section 151 of CPC to grant of an order of interim injunction pending suit. The

learned Additional District Munsif, after considering the averments in the application as well as in the counter had dismissed the applications. Aggrieved by the findings of the orders of the learned Additional District Munsif, the above referred C.M.As were preferred before the learned Subordinate Judge, Salem. The learned Subordinate Judge in her detailed order not only dismissed both the CMAs but also dismissed the suit in O.S. No. 908 of 2007 which necessitated the revision petitioner/plaintiff to approach this Court by way of these revisions.

3. The grievance of the learned Counsel appearing for the revision petitioner is that without an application under Order 7 Rule 11 of CPC for rejecting the plaint, the first appellate authority, suo motu had passed an order for removal of the suit from the file of the learned Additional District Munsif No. 1, Salem. A reading of the impugned orders will go to show that relying on a decision reported in K.K. Swaminathan Vs. Srinivasagam, , the learned Subordinate Judge, Salem had ordered removal of the suit from the file of the trial Court. But on a perusal of the ratio in K.K. Swaminathan Vs. Srinivasagam, will go to show that the said revision was preferred against the order passed u/s 11 of CPC. The findings of this Court in the above said ratio is that the suit itself was barred by Res Judicata. There is no occasion for this Court in the above said dictum to decide whether the plaint filed by the plaintiff in that suit was liable to be rejected under Order 7 Rule 11 of CPC. I am of the view that the learned First appellate Judge, while dismissing the CMAs has no power to dismiss the suit itself. The first appellate Court/Subordinate Judge. Salem ought to have given directions or liberty to the defendant to file appropriate application before the trial Court under Order 7 Rule 11 of CPC for the rejection of the plaint.

4. The sixth respondent in CRP(NPD) No. 783 of 2009/Dr. N.P. Prithivirajan would contend that after obtaining a sale deed in respect of the property belonging to the minor defendants, without following the provisions contemplated u/s 8(1) of the Minority and Guardianship Act, the plaintiff had obtained sale deed fraudulently and had filed the suit. Whether the suit is maintainable or not, is a matter to be decided only in the suit and not in an application filed under Order 39 Rules 1 and 2 of CPC.

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 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 CPC 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. Consequently, connected MPs are closed.