

(2009) 01 MAD CK 0349

In the Madras High Court

Case No : C.R.P. PD. 3004 of 2008 and M.P. No. 1 of 2008

Krishnammal and B. Sakthi Balan

APPELLANT

Vs

Venkatrayalu Naidu and Others

RESPONDENT

Date of Decision : 20-01-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2(2)
Constitution of India, 1950 — Article 227

Citation : (2009) 2 CTC 319 : (2009) 2 MLJ 587

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : K. Rajasekaran, for the Appellant; K. Dhananjeyan, for the Respondent

Judgement

G. Rajasuria, J.—This civil revision petition is filed seeking to strike off of the plaint in O.S. No. 414 of 2008 on the file of the Principal District Munsif, Cheyyar.

2. The nutshell facts giving rise to the filing of this revision petition, as stood expositied from the records as well as the submissions made on both sides, could succinctly and precisely, tersely and briefly be set out thus:

According to the learned Counsel for the first revision petitioner/defendant-Krishnammal, she filed the suit O.S. No. 615 of 1967 before the District Munsif Court, Arni, for declaration, possession and injunction relating to the same suit property involved in the present suit O.S. No. 414 of 2008 pending before the District Munsif Court, Cheyyar. The District Munsif Court, Arni, decreed the suit as prayed for. Whereupon the respondents/plaintiffs' father preferred an appeal and the said appeal was dismissed, as against which there was no second appeal. The said Krishnammal executed the decree in O.S. No. 615 of 1967 and obtained delivery of possession of the suit property, which was recorded on 26.10.1973. Subsequently, the respondents/plaintiffs' father Devarajulu Naidu, filed one another suit O.S. No. 297 of 1973 seeking declaration of title and for recovery of possession and he also filed C.M.A. No. 9 of 1974 as against the

recording of delivery on 26.10.1973 by the District Munsif Court, Arni. The said suit as well as the C.M.A. was dismissed. Whereupon Devarajulu Naidu filed appeal as against the dismissal of his suit O.S. No. 297 of 1973. Pending such appeal, he died and hence, his LRs, namely, the respondents/plaintiffs got themselves impleaded, however the said appeal was dismissed. Thereafter, they filed S.A. No. 288 of 1983, which also was dismissed on 23.2.1996. The respondents/plaintiffs filed O.S. No. 330 of 1996 before the Principal District Munsif, Cheyyar, seeking injunction, but the same was dismissed on 12.9.2005. It is also a fact that when Krishnammal took steps and got patta changed in her name, the respondents/plaintiffs, challenging the same, filed the suit O.S. No. 137 of 1997 before the Additional District Munsif, Cheyyar. But the said suit was dismissed. Thereafter, the respondents/plaintiffs filed the present suit O.S. No. 414 of 2008 seeking injunction in respect of same suit property.

3. According to the learned Counsel for the revision petitioners, the aforesaid facts are sufficient to strike down the suit O.S. No. 414 of 2008 which is pending on the file of the Principal District Munsif Court, Cheyyar and it is a clear abuse of the process of Court by the respondents/plaintiffs in filing such suit, so as to harass the revision petitioners.

4. Whereas the learned Counsel for the respondents/plaintiffs would argue that as per the sale deed dated 7.12.1970, the said Krishnammal and her husband sold away the suit property in favour of Devarajulu Naidu-the father of the present plaintiffs referred to in the suit; whereupon the sellers had no right or title over it; over and above that, the said Krishnammal also executed a release deed dated 3.6.1970, so as to buttress and fortify the sale deed; in the previous litigation before the High Court, the said sale deed dated 7.12.1970 and the release deed were held to be valid, but ultimately the second appeal was dismissed on technical grounds.

5. There are lot of facts involved based on documents and several judgements also emerged in respect of the dispute, which emerged between the two groups and as such, this Court under Article 227 of the Constitution, cannot be justified in simply rejecting the plaint at the threshold itself.

6. In this factual matrix, it is crystal clear that there ensued pro longed litigation between the two groups. The perusal of the records would indicate that the trial Court itself, on perusal of the plaint in the present suit made query as under:

1. Already this suit matter has been heard and decided by the Hon"ble High Court as per the contentions of the plaintiff in his plaint averments. Hence, how this suit is maintainable before this Court?

and returned the plaint. Whereupon the counsel for the respondents/plaintiffs re-presented the same with the following endorsement:

Even though the Hon"ble High Court has already decided the matter w.r.t. title of the suit property. But the possession is still in the hands of plaintiff. The

defendant can recover possession only through due process of law. But the defendant tried to get through police officials. Hence the suit.

However the Court simply numbered the suit. The learned Counsel for the revision petitioners would appropriately and appositely, correctly and convincingly, would put forth his submission that the Court, after raising such query correctly, should not have simply numbered the suit. It ought to have got the matter to be called in the open Court for hearing the counsel for the plaintiffs on merits and thereupon tentatively an order should have been passed regarding numbering of the suit or not. But without resorting to such a procedure, on representation with the above said endorsement by the counsel, simply the Court numbered the suit, which was not correct. It has become a fait accompli that the lower Court instead of hearing the counsel in the open Court relating to the maintainability of the suit, simply numbered it.

7. I am fully aware of the fact that in certain matters, as per Order 14 Rule 2(2) of C.P.C. preliminary issue could be framed and decided; however in some cases all the issues have to be decided together. But this is a singularly singular case, in which there emerged a lot of previous judgements as against the very plaintiffs themselves and the trial Court also on seeing them, developed a doubt about the maintainability of the plaint and in such a case, the lower Court is bound to probe into the maintainability of the suit at the first instance itself. No doubt, in certain matters, as correctly pointed out by the learned Counsel for the revision petitioners, this Court can invoke the power under Article 227 of the Constitution and strike down the frivolous proceedings. But taking into consideration the multifarious and voluminous facts involved, based on previous legal proceedings, I am of the considered opinion that the trial Court itself can be directed to look into all those aspects at the initial stage itself and pass reasoned order.

8. In this case, so far no written statement also has been filed, inasmuch as the defendant felt that the suit is not even worthy of being numbered as such. In these circumstances, the following order is passed:

The trial Court suo mottu is directed to decide on the query which it raised at the time of returning the plaint itself relating to the maintainability of the suit. In support of the contention of the defendant, she is at liberty to file written statement to the limited extent within a period of 15 days from the date of receipt of copy of this order, enclosing the relevant certified copies of the documents including judgments and decrees; in the meanwhile, the respondents/ plaintiffs also shall file copies of all the relevant documents. Without taking any oral evidence but relying on such documents, the trial Court is directed to hear both sides and pass order on the maintainability of the very suit itself. The entire process shall be completed within one month from the date of receipt of copy of this order.

9. The civil revision petition is ordered accordingly. No costs. Consequently,

connected miscellaneous petition is closed.