

(2011) 11 MAD CK 0142
In the Madras High Court
Case No : C.R.P (PD) (MD) No. 678 of 2010

S. Kennady

APPELLANT

Vs

Andammal, Sethuraman and Kannan

RESPONDENT

Date of Decision : 12-11-2011

Acts Referred:

Citation : (2011) 11 MAD CK 0142

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : M. Saravanan, for the Appellant; S. Manohar for R.1 and Mr. T.R. Jeyapalam for R.2 and R.3, for the Respondent

Judgement

Honourable Mr. Justice G. Rajasuria

1. C.R.P (PD). (MD) No. 678 of 2010 is focussed by the 19th defendant to get set aside the order in I.A. No. 312 of 2009 in O.S. No. 554 of 2004, dated 22.10.2009 on the file of the learned I Additional District Judge, Madurai.

2. A.S. (MD) No. 42 of 2010 is filed against the judgment and decree dated 22.09.2009 passed in O.S. No. 554 of 2004 on the file of the learned I Additional District Judge, Madurai.

3. A summarisation and summation of the relevant facts absolutely necessary and germane for the disposal of the Civil Revision Petition as well as the Appeal Suit would run thus:

Andalammal, who is the first respondent herein in the Civil Revision Petition as well as in the Appeal Suit, filed the original suit for partition arraying her co-sharers as well as tenants in the suit properties as defendants. During the pendency of the suit, Kennady -19th defendant filed an interlocutory application in I.A. No. 312 of 2009 in O.S. No. 554 of 2004 for transposing him as plaintiff sensing that the said Andalammal might cease to proceed with the matter as plaintiff. Peculiarly, the trial Court dismissed the suit for default on non-

appearance of the plaintiff -Andalammal; whereupon holus bolus, without any rhyme or reason, the trial Court also simply dismissed the I.A. No. 312 of 2009 filed by the 19th defendant.

4. Being aggrieved by and dissatisfied with the dismissal of the I.A. No. 312 of 2009 and the suit, the present Civil Revision Petition and the Appeal Suit have been filed on various grounds.

5. The Learned Counsel for the revision petitioner and appellant would submit that the trial Court was not justified in simply dismissing the suit as well as the I.A; that at least, on seeing the plaintiff not prosecuting the suit, the trial Court should have allowed the I.A. filed by him for transposing him as the plaintiff and proceeded with the matter, because it was a partition suit.

6. The Learned Counsel for the first respondent/ plaintiff would submit that in a partition suit, the plaintiff is the defendant and vice versa.

7. Not to put too fine a point on it, no more elaboration is required in this regard as the way in which the trial Court dealt with the matter is far from satisfactory, to say the least.

8. In respect of a partition suit, it is a settled proposition of law that the plaintiff is the defendant and the defendant is the plaintiff. The 19th defendant -Kennady, the revision petitioner as well as appellant herein could have very well refrained from filing the said I.A, but on the other hand, in the written statement itself, which he filed, he could have made a prayer for allotment of his share and paid the requisite Court fee. On seeing the plaintiff not prosecuting the case, the matter ought to have been allowed to be proceeded with by treating the 19th defendant as the plaintiff and that is quite obvious and axiomatic.

9. These are all pragmatic technicalities which the trial Court failed to understand and appreciate, warranting interference in the Civil Revision Petition as well as in the Appeal.

10. Accordingly, I would like to allow the Civil Revision Petition as well as the Appeal Suit and pass the following order:

O.S. No. 554 of 2004 shall stand restored in its original number on the file of the trial Court. Whereupon the parties shall appear before the trial Court on 28.11.2011. The trial Court shall order for serving summons to those who were all not already served and after complying with the formalities relating to service of summons and entertaining the written statements and framing relevant issues, the trial Court after conducting trial, shall dispose of the Original Suit itself at earliest possible time, preferably within a period of six months from 28.11.2011. No costs.

11. At this juncture, the Learned Counsel for the first respondent/plaintiff would submit that the first respondent has also filed an application for restoring the suit before the trial Court and such application in view of this order has become

redundant.

12. As per this order, the suit shall automatically stand restored. I also make it clear that even after this order, if the first respondent/plaintiff -Andalammal fails to prosecute the suit as plaintiff, the 19th defendant -Kennady who comes forward to proceed with the matter, shall be treated as plaintiff by the trial Court and proceed with the case as per law.