

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.02.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.4018 of 2015
and M.P.No.1 of 2015

1.B.Dayaalan
2.B.Nagammal

... Petitioners

Vs

1.B.Balaji
2.G.K.Kumar
3.M.Sugunabai

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 10.07.2015 made in IA.No.653 of 2015 in OS.No.448 of 2014 on the file of the District Munsif-cum-Judicial Magistrate Court, Sriperumbudur.

For Petitioners : Mr.K.V.Subramanian, Senior Counsel
for Mr.D.Praveen Kumar
For Respondents : Mr.D.Vijayan

ORDER

The revision has been filed against the order dismissing an application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 praying for rejection of the plaint on the ground that the relief sought for has been barred by limitation and by the principle of *res judicata*. Both the grounds can be raised as a defence in the written statement and if conducive, can be sought to be enquired into and decided as preliminary issues.

2. Though the petitioner has chosen to prefer the Civil Revision Petition against the dismissal of the application filed under Order VII Rule 11 of C.P.C., learned counsel for the petitioner seeks the leave of the Court to withdraw the Civil Revision Petition with liberty to move the trial Court by way of an application to decide the issues as preliminary issues. An endorsement to that effect has also been made.

3. Endorsement is recorded and this Civil Revision Petition is dismissed as withdrawn with the liberty as indicated supra. The fact that such liberty is granted shall not be interpreted to mean that this Court has expressed any opinion regarding the merits of the application to be filed before the trial Court. No costs. Consequently, connected Miscellaneous Petition is closed.

25.02.2016

Index : Yes/No
Internet : Yes/No

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To
The District Munsif-cum-Judicial Magistrate,
Sriperumbudur.

P.R.SHIVAKUMAR, J.

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