

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.3410 of 2012

and

M.P.No.1 of 2012

Irudayam
S/o.Savarimuthu,
99, Anna Nagar,
Kumaraswami Pettai,
Dharmapuri 636 703
Dharmapuri

... Petitioner

Vs

Murugan
S/o.Krishnan,
Savulupatti,
Kumaraswami Pettai,
Dharmapuri - 636 703
Dharmapuri District

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the impugned the fair and decreetal orders dated 24.07.2012 in I.A.No.644 of 2011 in O.S.No.62 of 2002 on the file of the learned District Munsif at Dharmapuri and allow the petition in I.A.No.644 of 2011 in O.S.No.62 of 2002.

For Petitioner : Mr.A.Thiyagarajan

For Respondent : Mr.C.Munusamy

ORDER

Heard both sides.

2. After the suit was decreed, the appellate Court set aside the decree and remanded the suit for fresh disposal after giving both parties opportunity to adduce additional evidence. After such remand, the plaintiff filed a petition under Order VI Rule 17 C.P.C purporting to be a petition for amendment of the plaint. The same was dismissed by the trial Court holding that the petition was not filed for amendment of the plaint and on the other hand, it was filed for a direction straight away to demolish the superstructure and hand over possession of the land to the plaintiff.

3. Mr.A.Thiyagarajan, learned counsel for the petitioner submits that a defective drafting resulted in catastrophe and for the mistake committed by the counsel, the party should not be penalised by driving him without a remedy. Learned counsel for the petitioner submits that the intention of the petitioner in filing I.A.No.644 of 2011 in O.S.No.622 of 2002 on the file of the trial Court will be very much revealed from the details of amendment appended to the petition filed under Order VI Rule 17 C.P.C, wrongly with a prayer to demolish the

building and deliver possession of the property or deliver possession of the property along with the building.

4. It is the contention of the learned counsel for the petitioner that the petition ought to have been returned pointing out the defects. Had it been returned, the petitioner would have corrected the mistake and re-presented. Since it was not returned pointing out the defects, the petitioner had to suffer an order of dismissal of the petition on mere technicality. In view of the same, realising the mistake, the petitioner wants the leave of this Court to withdraw I.A.No.644 of 2011 to file a fresh petition for amendment, which shall be bereft of such mistakes.

5. Learned counsel for the respondents submits that the respondents do not have any objection to permit the petitioner to withdraw the I.A for amendment, but the respondent has his own reservation regarding the prayer for the grant of leave to file a fresh petition. The very purpose for which the petitioner is to be permitted to withdraw the petition is to rectify the technical mistake and file a fresh petition without such mistake. Hence, the objections raised by the learned counsel for the respondents for the grant of relief cannot

be sustained.

6. This Court is of the view that it is just and necessary to grant permission to the petitioner to withdraw I.A.No.644 of 2011 with liberty to file a fresh petition. Accordingly, the Civil Revision Petition is allowed in part. The order of the trial Court dated 24.07.2012 dismissing I.A.No.644 of 2011 is modified by an order of dismissal of the said petition as withdrawn with liberty to file a fresh petition. Such fresh petition shall be filed within a week from the date of receipt of a copy of this order and when such petition is filed, the trial Court shall decide it on its own merits without being influenced by any of the observations made by the trial Court in the order pronounced in I.A.No.644 of 2011. No costs. Consequently, connected miscellaneous petition is closed.

24.02.2016

Index: Yes/No
Internet: yes/No

Note: The Registry is directed to send back the records received from the trial Court immediately.

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To

The District Munsif, Dharmapuri

P.R.SHIVAKUMAR, J.

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