



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 07.10.2016

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P (PD) (MD)No.2062 of 2016

and

C.M.P (MD)No.9658 of 2016

Tamilarasan

..Petitioner/7th Defendant

vs.

1.Nallakurumban

..Ist Respondent/Plaintiff

2.Kottaikalai

3.Nallathambi

4.Chinnan

5.Karuppayee

6.Chellaiah Thevar

7.Nagamuthu

..Respondents 2 to 7/Defendants

1 to 6

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying this Court to strike off the plaint in O.S.No.206 of 2013 on the file of the District Munsif-cum-Judicial Magistrate Court, Usilampatti.

For Petitioner : M/s.R.G.Shankar Ganesh

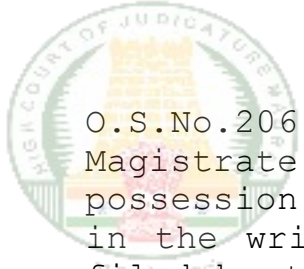
ORDER

This Civil Revision Petition is filed seeking a direction to strike off the plaint in O.S.No.206 of 2013, on the file of the District Munsif-cum-Judicial Magistrate Court, Usilampatti.

2.According to the Petitioner, the first respondent herein filed a suit in O.S.No.206 of 2013, on the file of the District Munsif-cum-Judicial Magistrate Court, Usilampatti, for passing a preliminary decree for partition with a direction to the defendants to divide the properties into three equal shares and allot one such share to the Plaintiff. In the aforesaid suit, the Petitioner/7th respondent has also filed a written statement raising a defence that in the earlier round of litigation, the first respondent's grand-father filed a suit in O.S.No.87 of 1995, wherein, the vendor of the Petitioner is a party to the said proceedings. Therefore the Petitioner has filed the present Civil Revision Petition before this Court to strike of the plaintiff in O.S.No.206 of 2013, on the file of the District Munsif-cum-Judicial Magistrate Court, Usilampatti.

<https://hcservices.ecourts.gov.in/hcservices/>

3.Considering the submissions made by the learned counsel for the Petitioner that the first respondent has filed a suit in



O.S.No.206 of 2013 before the District Munsif-cum-Judicial Magistrate Court, Usilampatti for partition and separate possession and the fact that the Petitioner has raised a defence in the written statement that in the earlier round of litigation filed by the first respondent's grand-father in O.S.No.87 of 1995 and it has become final, the present Civil Revision Petition filed by the Petitioner cannot be entertained by this Court. According to the Petitioner, he relied on a decision in the case of *N.Babu . vs. S.Shanmugam in C.R.P(PD)No.1992 of 2012, dated 15.11.2012*, wherein, the facts of this case, in the earlier round of litigation, a suit was filed in O.S.No.522 of 1996. Aggrieved by the judgement decree passed in the aforesaid suit, an appeal suit in A.S.No.101 of 2000 was filed and the same was dismissed and thereafter, a Second Appeal in S.A.No.262 of 2002 filed by the father of the second respondent was also dismissed on 16.04.2008. Again a suit in O.S.No.5 of 2012 has been filed. In the aforesaid case, the case was decided on merits and in the same, finality has been reached at the stage of Second Appeal. As far as the present case is concerned, according to the Petitioner, that the suit was dismissed for default. Therefore the aforesaid judgement will not be applicable to the facts of the present case. Therefore, the Revision Petitioner has filed the present Civil Revision Petition, before exhausting the remedy, under the provisions of Law.

4.However, considering the facts and circumstances of the case and in the interest of justice, without expressing any opinion on the merits of the matter, liberty is granted to the Petitioner to file appropriate application before the trial Court, under the provisions of Law, if so advised and the same shall be considered by the trial Court independently and in accordance with law.

5.With the above direction, the Civil Revision Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To

The District Munsif-cum-Judicial Magistrate, Usilampatti.

+1cc to M/s.R.G.Shankar Ganesh, Advocate in SR.60229

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