

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2017

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

CRP.(PD).No.26 of 2014
and M.P.No.1 of 2014

S.Selvaraj ... Petitioner

Vs.

N.Sakthivel ... Respondent

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 12.11.2013 made in I.A.No.147 of 2013 in O.S.No.264 of 2012 on the file of the learned District Munsif Court, Gobichettipalayam.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.A.Gokulakrishnan

ORDER

सत्यमेव जयते

This Civil Revision Petition is filed against the fair and decretal order dated 12.11.2013 made in I.A.No.147 of 2013 in O.S.No.264 of 2012 on the file of the learned District Munsif Court, Gobichettipalayam.

2.The petitioner is a second defendant and the respondent is the plaintiff in O.S.No.264 of 2012 on the file of the

learned District Munsif Court, Gobichettipalayam. The respondent has filed the above suit for permanent injunction against the petitioner and another. The petitioner filed I.A.No.147 of 2013 under Order 7 Rule 11 (a) read with Section 151 of C.P.C, to reject the plaint on the ground that one Nagammal, arrayed as first defendant, died on 22.06.1996. The respondent has alleged that the said Nagammal and the petitioner on 27.10.2012, interfered and tried to destroy the irrigation channel is not correct. No cause of action has arisen for filling of the suit as alleged by the respondent in the plaint.

3.The respondent filed counter affidavit and submitted that Chinnan @ Irulappa Nadar had two wives namely Nagammal and Arukkaniammal. On 27.10.2012, Arukkaniammal, the wife of Chinnan @ Irulappa Nadar and the petitioner tried to destroy the irrigation channel. The respondent and neighbors prevented the same. On enquiry, the respondent was informed that the name of the person who tried to destroy the channel along with the petitioner is wife of Chinnan @ Irulappa Nadar and her name is Nagammal, instead of Arukkaniammal. The respondent came to know about the mistake only when the petitioner filed memo stating that Nagammal died on 22.06.1996. The respondent has filed

I.A.Nos.202 and 203 of 2013 for amendment to substitute the name of Arukkaniammal in the place of Nagammal as first defendant. Mentioning the name of Nagammal instead of Arukkaniammal is by mistake. That does not amount to no cause of action for filing the suit.

4.The learned Judge, considering the averments in the plaint, affidavit, counter affidavit and the I.A.Nos.202 and 203 of 2013 filed by the respondent, dismissed the application.

5.Against the said order of dismissal dated 12.11.2013 made in I.A.No.147 of 2013 in O.S.No.264 of 2012, the present Civil Revision Petition is filed by petitioner.

6.From the records, it is seen that the contention of the petitioner is that no cause of action has arisen for filing the suit on the ground that the first defendant died on 22.06.1996 and she could not have interfered and tried to destroy irrigation channel on 27.10.2012, as alleged by the respondent. On the other hand, the respondent has contended that on 27.10.2012, the petitioner and wife of Chinnan @ Irulappan tried to destroy the irrigation channel and he had two wives by name Nagammal and Arukkaniammal. On

enquiry, the name of the person who tried to destroy the irrigation channel along with the petitioner was informed that she is Nagammal. In the circumstances, they have filed the suit in the name of Nagammal instead of Arukkaniammal. The petitioner has not deny that Arukkaniammal and Nagammal are wives of Chinnan @ Irulappan and the respondent has filed applications viz., I.A.Nos.202 and 203 of 2013 for amendment. In view of the same, the contention of the petitioner that no cause of action has arisen for filing of the suit is without merits. It is for the respondent to prove that the petitioner along with others tried to destroy the irrigation channel as alleged in the plaint. The learned Judge has considered all the above facts and dismissed the application rightly. There is no irregularity or illegality warranting interference with the order of the learned Judge dated 12.11.2013.

7.In the result, this Civil Revision Petition is dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

10.11.2017

Index:Yes/No
at/gsa

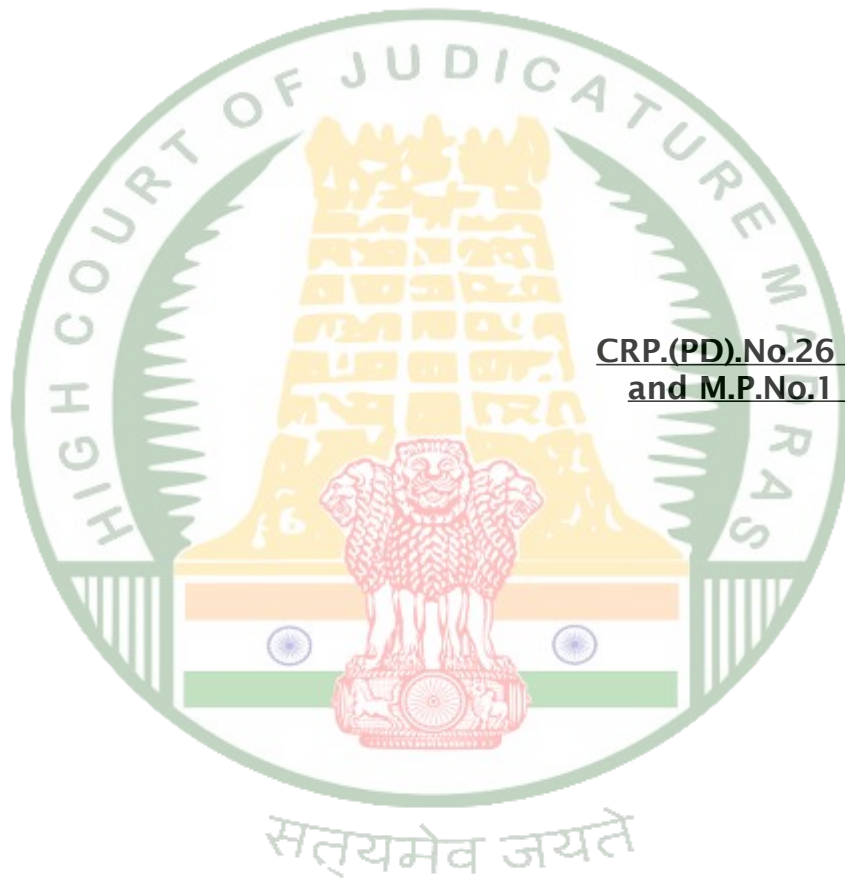
To
The District Munsif,
Gobichettipalayam



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V.M.VELUMANI,J.

at



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