

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No.3272 of 2017
and
C.M.P No. 15273 of 2017

1. P. Jayaraman
2. P. Venkatachalam
3. P. Vasudevan

.. Petitioners

Vs

Vasantha

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 23.01.2017 made in I.A. No.951/2016 in O.S. No.176/2008 on the file of learned District Munsif and Judicial Magistrate, Omalur.

For Petitioners : Mr. J. Ramakrishnan

For Respondent : Mr. D. Baskar

ORDER

This revision arises against the fair and decreetal order dated 23.01.2017 made in I.A. No.951/2016 in O.S. No.176/2008 by the learned District Munsif and Judicial Magistrate, Omalur.

2. The respondent has filed the suit in O.S. No. 176/2008 for partition against the petitioners herein/ defendants 2 to 4 and their father. Pending suit, the petitioners' father, who was the 1st defendant in the suit died, so their mother was brought on record as the 5th defendant. The revision petitioners filed an application in I.A. No.951 of 2016, to receive additional statement raising the ground of non-joinder of necessary parties in the aforesaid suit. The respondent/ plaintiff has filed the counter affidavit and the said application was dismissed by the court below. Challenging the said order, the present revision has been filed.

3. According to the petitioners, a detailed written statement has been filed by their deceased father in the suit and the same was adopted by them. Subsequently, an additional written statement has also filed by the 1st petitioner herein, adopted by the 2nd and 3rd

petitioners. In the aforesaid written statement, it has been specifically pleaded that the suit is liable to be dismissed for the non-joinder of necessary parties. The instant application filed before the court below raising the said ground, stating that pursuant to the execution of the Will, necessary parties have not been impleaded in the suit. Therefore, the revision has to be allowed and consequently the order passed by the court below is liable to be set aside.

4. Per contra, the learned counsel for the respondent would submit that the 1st defendant in the suit/ deceased father of the petitioners, has raised the specific averment in the written statement filed on 05.01.2009, that the respondent/ plaintiff has not impleaded necessary parties in the said suit. Now the trial has commenced, the plaintiff's evidence has been completed and the suit is posted for cross examination of DW-1. At this stage, the present application is filed by the petitioners, only to protract the proceedings and drag on the trial. Therefore, the order passed by the court below is perfectly correct and prayed for dismissal of the revision.

5. Considered the submission made by the parties and perused

the material available on record.

6. It is an admitted fact that the 1st defendant had filed a detailed written statement, wherein the deceased father of the revision petitioners has specifically raised that the said suit is bad in law for non-joinder of necessary parties. However, at the time of arguments, it is brought to the notice of this Court that the trial court has not framed the same as an issue. Under such circumstances, the learned counsel for both the parties agreed that the court below has to frame the issue of non-joinder of necessary parties and to decide the suit, since the ground of non-joinder of necessary parties has already been raised in the written statement of the deceased defendant. Hence, order of the court below is confirmed and no interference is warranted in the order passed by the court below. However, as prayed by both the parties, the trial court is directed to frame additional issues, for non-joinder of necessary parties in the suit, as raised in the written statement and to decide the suit.

8. The Civil Revision Petition is disposed of, with the above

direction. Consequently, the connected Miscellaneous Petition is closed.

No order as to costs.

04.12.2017

Index : Yes/ No

Speaking order/ Non speaking order

[Issue order copy next week]

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To

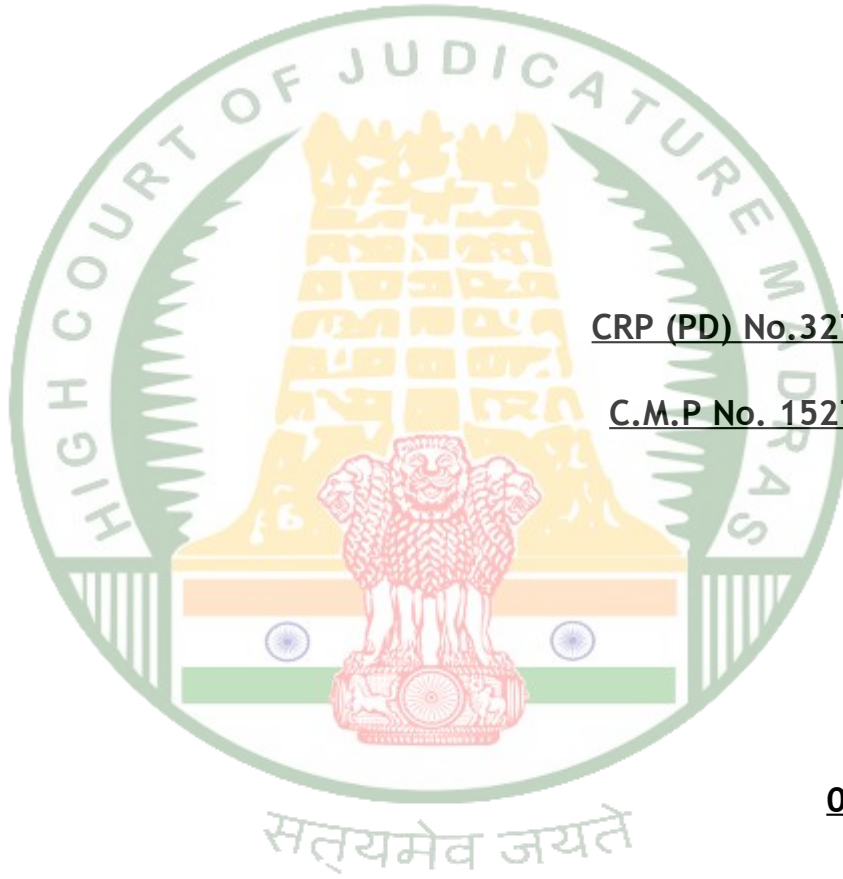
The District Munsif and
Judicial Magistrate,
Omalur.



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D. KRISHNAKUMAR J.,

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