

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2603 of 2010
& M.P.No.1 of 2010

Panchavarnam

.. Petitioner

Vs.

1.Narayana Moopar
2.Shanmuga Moopar

.. Respondents

PRAYER: Civil Revision Petition filed Under Article 227 of the Constitution of India, against the fair and decretal order dated 15.07.2009, made in I.A.No.177 of 2009 in O.S.No.79 of 2005, on the file of the Principal District Munsif Court, Kallakurichi.

For Petitioner : M/s.Zeenath Begam

For R1 & R2 : No appearance

ORDER

This civil revision petition is filed against the fair and decretal order dated 15.07.2009, made in I.A.No.177 of 2009 in O.S.No.79 of 2005, on the file of the Principal District Munsif Court, Kallakurichi.

2. The petitioner is plaintiff and respondents are defendants in O.S.No.79 of 2005. The petitioner filed the said suit for declaration, partition and separate possession, against the respondents, on the file of the Principal District Munsif Court, Kallakurichi. The petitioner filed I.A.No.177 of 2009, under Order 23, Rule 1 C.P.C for permission to withdraw the suit with liberty to file a fresh suit on the same cause of action, after rectifying the defects in the present suit. According to the petitioner, the description of the property is not in consonance with the Revenue records and has not been properly described and has not sought for proper relief as per law.

3. The respondents filed counter affidavit and opposed the said application and submitted that earlier, petitioner had filed I.A.No.283 of 2008 for amendment of the plaint and the same was allowed. The petitioner carried out amendment and has filed amended copy of the plaint. The petitioner ought to have sought for in the earlier application. The suit is of the year 2005 and the petitioner has filed application in the year 2009, only to drag on the proceedings and prayed for dismissal of the application.

4. The learned Judge, considering the averments in the affidavit, counter affidavit and materials available on record, allowed the application, permitting the petitioner to withdraw the suit without liberty to file fresh suit.

5. Against the said order dated 15.07.2009, made in I.A.No.177 of 2009 in O.S.No.79 of 2005, on the file of the Principal District Munsif Court, Kallakurichi.

6. Heard the learned counsel appearing for the petitioner and perused the materials available on record. Though notices were served on the respondents and their names are printed in the cause list, there is no representation either in person or through counsel.

7. The contention of the learned counsel appearing for the petitioner that the learned Judge by permitting the petitioner to withdraw the suit without liberty to file fresh suit on the same cause of action, precluded from proceedings with the present suit is well founded. The learned Judge, considering the materials on

record either ought to have granted permission to the petitioner to withdraw the suit with liberty to file the fresh suit on the same cause of action or ought to have dismissed the application in entirety. The learned Judge has committed an irregularity in permitting the petitioner to withdraw the suit without liberty to file the fresh suit on the same cause of action. The learned Judge has rejected the request of the petitioner to file fresh suit on the same cause of action on the ground that on the earlier occasion, the petitioner filed application for amendment and the same was ordered and in the said application itself, the petitioner ought to have sought for all the amendment. The said reasoning of the learned Judge is proper and valid.

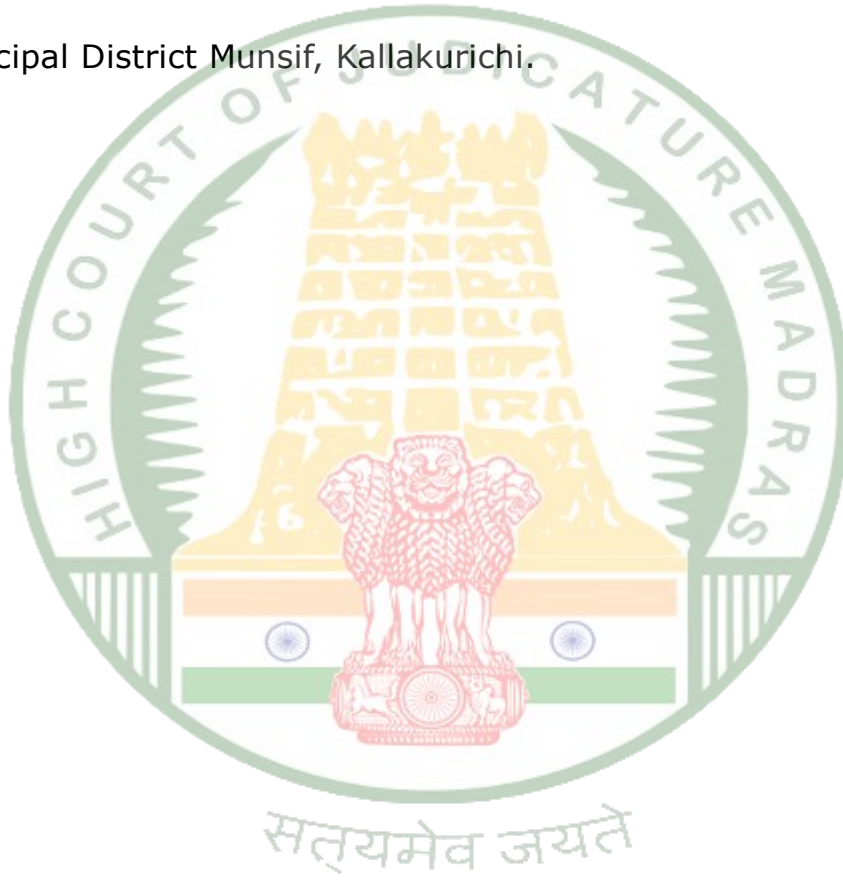
8. In view of the same, the impugned order of the learned Judge granting permission to the petitioner, only to withdraw the suit and rejecting the relief to file the fresh suit on the same cause of action is set aside. It is open to the petitioner to proceed with the suit as claimed, if so desires or so advised. With the above observation, the civil revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

11.08.2017

Index: Yes/No
gsa

To

The Principal District Munsif, Kallakurichi.



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V.M.VELUMANI, J.

gsa



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