

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **07.06.2017**

CORAM

THE HONOURABLE Mr. JUSTICE **K.K.SASIDHARAN**

C.R.P.(N.P.D)No.1853 of 2013 and
WMP. No.1 of 2013

1.Senguttuvan
Vaithiyalingam(Died)
2.K.Kandasamy
3.K.Kandasamy
4.Murugesan
Vai.Chidambaram(Died)
5.Kandasamy
6.Periyasamy
Kathamuthu Udayar(Died)
7.Su.karuppu Udayar
8.Sundaram @ Karuppu Udayar
P.K.Natesan(Died)
Perumal(Died)
9.Singaram

... Petitioners

Vs.

1.The Commissioner,
Hindu Religious & Charitable Endowment
(Administration) Department,
Chennai – 34.

2.The Deputy Commissioner,
Hindu Religious & Charitable Endowment
(Administration) Department,
Chinnathirupathi,
Salem – 8.

3. The Assistant Commissioner,

Hindu Religious & Charitable Endowment
(Administration) Department,
Salem – 1.

Chidambar Udayar.

4.R.Nadesan
5.Poomalai
6.Pottiyammal
7.Jayamani
8.Suseela
9.Singaram
10.Shakthivel
11.Nallammal
12.Rathinam
13.Sivanandam

... Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, against the order dated 18.02.2013 passed in I.A.No.38 of 2012 in A.S.No.58 of 2008, on the file of the Subordinate Court, Rasipuram.

For Petitioners : Mr.P.Jagadeesan

For Respondents : Mr.P.Valliappan for R4 to R13

No Appearance for R1 to R3

ORDER

The petitioners earlier filed a suit in O.S.No.65 of 1995 against the respondents. The suit was withdrawn, with liberty to file a fresh suit. Thereafter, the petitioners filed a fresh suit in O.S.No.129 of 2002. The suit was contested by the respondents. The Trial Court dismissed the suit, on

merits, by judgment and decree dated 16 July 2004. The decree was challenged, in A.S.No.58 of 2008, before the Subordinate Court, Rasipuram.

2. The petitioners filed an application in I.A.No.38 of 2012, seeking permission to withdraw the suit with liberty. The application was opposed by the respondents. The learned Subordinate Judge, Rasipuram by way of a very detailed order dismissed the application on merits. The said order is under challenge in the Revision Petition.

3. The learned counsel for the petitioners contended that there was a formal defect with regard to the array of parties and that was the reason for filing the application before the First Appellate Court for withdrawal of the suit. According to the learned counsel, the petitioner committed a mistake in the cause title while drafting the plaint which could be rectified only by withdrawing the suit. Since, the plaint was filed with formal defects, the petitioners filed an application invoking Order 23 Rule 1 & 3 and Section 151 of Code of Civil Procedure. The Trial Court without appreciating the background facts, dismissed the application.

4. I have also heard the the learned counsel for the respondents.

5. The petitioners earlier filed a suit in O.S.No.65 of 1995 against the respondents. It was a suit for declaration and injunction. Before the Trial

Court, the petitioners filed an application for withdrawal of the suit with liberty to file a fresh suit. The application was allowed by the learned Trial Judge. Thereafter, the petitioners filed a fresh suit in O.S.No.129 of 2002, before the District Munsif Court, Rasipuram. The suit was dismissed by the learned District Munsif on merits. The matter was taken up by the petitioners before the First Appellate Court in A.S.No.58 of 2002. The appeal was pending from 2008 onwards. The petitioners filed an application in I.A.No.38 of 2012 for withdrawal of the suit with liberty to file fresh a suit.

6. The alleged defect with respect to the plaint ought to have been pointed out to the learned District Munsif, during the currency of the suit. The petitioners, notwithstanding the alleged defect, prosecuted the suit. The petitioners filed application before the First Appellate Court for withdrawal of the suit. The course adopted by the petitioners clearly indicate that it was only to avoid the binding decree passed by the Trial court in O.S.No.129 of 2002, application in I.A.No.38 of 2012 was filed for withdrawal of the suit. There is no question of permitting the series of applications to withdraw the suit with liberty to initiate fresh suit.

9.The learned First Appellate Judge has given cogent reasons while dismissing the application filed by the petitioners. It is not for this Court to reappreciate those reasons by exercising the revisional jurisdiction.

10. In the upshot, I dismiss this Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is closed. I make it clear that the observation made in this Civil Revision Petition would not stand in the way of the petitioners from prosecuting the appeal before the First Appellate Court.

07.06.2017

Index: Yes/No
si/arr

To

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(Administration) Department,
Chinnathirupathi, Salem – 8.

3. The Assistant Commissioner,
Hindu Religious & Charitable Endowment
(Administration) Department,
Salem – 1.

4.The Subordinate Court,
Rasipuram.

K.K.SASIDHARAN,J.

si

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