

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2017

CORAM

THE HON'BLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(NPD) No.471 of 2009

N.Vanaja

.. Petitioner

Vs

1.Rukmani
2.C.Kannan

.. Respondents

Prayer:- Civil Revision Petition filed under Section 115 of the CPC, to set aside the order of the Learned Principal Subordinate Judge of Krishnagiri dated 27.06.2008 in I.A.No.44 of 2008 in A.S.No.77 of 2006.

For Petitioner : Mr.V.Nickolas

For Respondents : Mr.V.R.Shanmuganathan

ORDER

This Civil Revision Petition has been filed to set aside the order of the Learned Principal Subordinate Judge of Krishnagiri, dated 27.06.2008 in I.A.No.44 of 2008 in A.S.No.77 of 2006.

2. The petitioner is the plaintiff, respondents are the defendants in O.S.No.76 of 2005, on the file of District Munsif Court, Pochampalli and

petitioner is the appellant and respondents are the respondents in A.S.No.77 of 2006 on the file of Sub Judge, Krishnagiri. The petitioner filed the above suit for directing the respondents to vacate the suit property and hand over the possession to petitioner. The said suit was dismissed on contest. The petitioner filed an appeal in A.S.No.77 of 2006 on the file of the Sub Judge, Krishnagiri. Pending appeal, the petitioner filed an application in I.A.No.44 of 2008 for permission to withdraw the appeal in A.S.No.77 of 2006, as well as the suit in O.S.No.76 of 2005, with the liberty to file fresh suit on the same cause of action. According to the petitioner, the respondents disputed the title of the petitioner and the petitioner ought to have claimed declaration of title. Now only the petitioner was advised that she must seek declaration of title. In view of the said advise, she has filed the present application.

3. The respondents filed counter and opposed the said application and submitted that there is no provision at appellate stage to grant permission to withdraw the appeal and suit with liberty to file a fresh suit on the same cause of action. The cause of action and the relief sought for is entirely different from the case and relief now sought for.

4. The learned Judge, dismissed the application in I.A.No.44 of 2008 on the ground that the relief and cause of action are entirely different.

5. Against the said order of dismissal dated 27.06.2008 made in I.A.No.44 of 2008 in A.S.No.77 of 2006, the present civil revision petition is filed by the petitioner.

6. Heard the learned counsel appearing for the petitioner and learned counsel appearing for the respondents and perused the materials available on record.

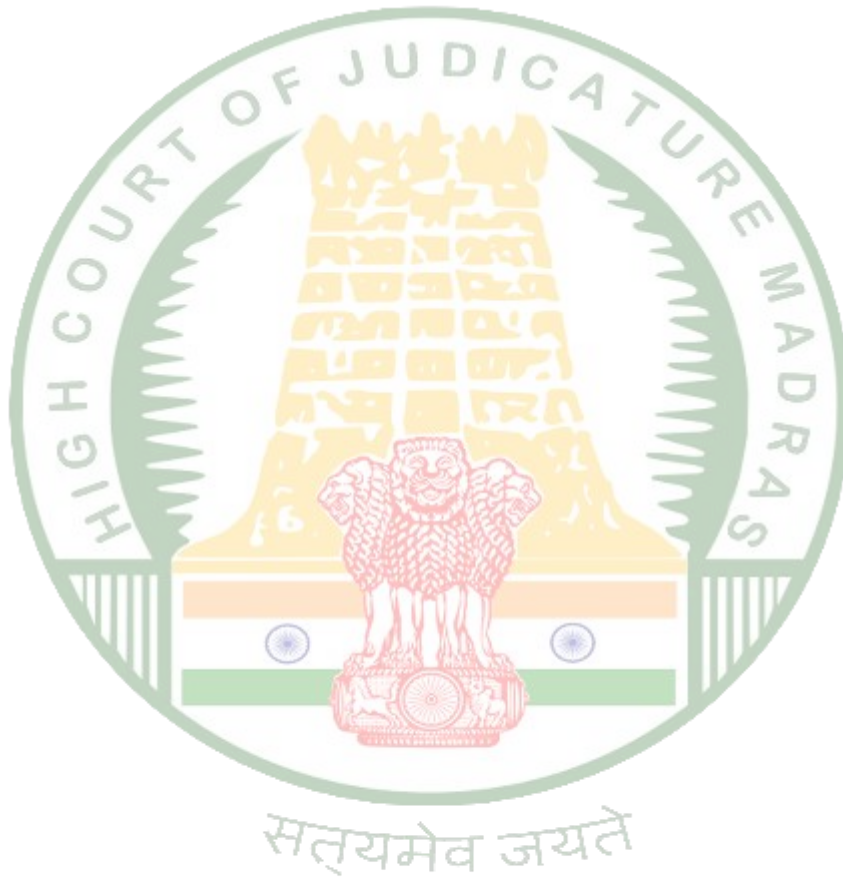
7. The Courts have power to permit the plaintiff to withdraw the suit with liberty to file fresh suit on the same cause of action, if any formal defect or Court is satisfied that such relief has to be granted to the plaintiff. In the present case, it is not the case of the petitioner that there is any formal defect. The petitioner is seeking permission on the ground that the petitioner has to file the suit for declaration of title and for possession. This is not the ground, contemplated under Order 23 of CPC for granting permission to the plaintiff to withdraw the suit with liberty to file a fresh suit on the same cause of action.

8. In the result, the civil revision petition is dismissed as devoid on merits. No costs.

06.09.2017

Index: Yes/No

rna/gsa



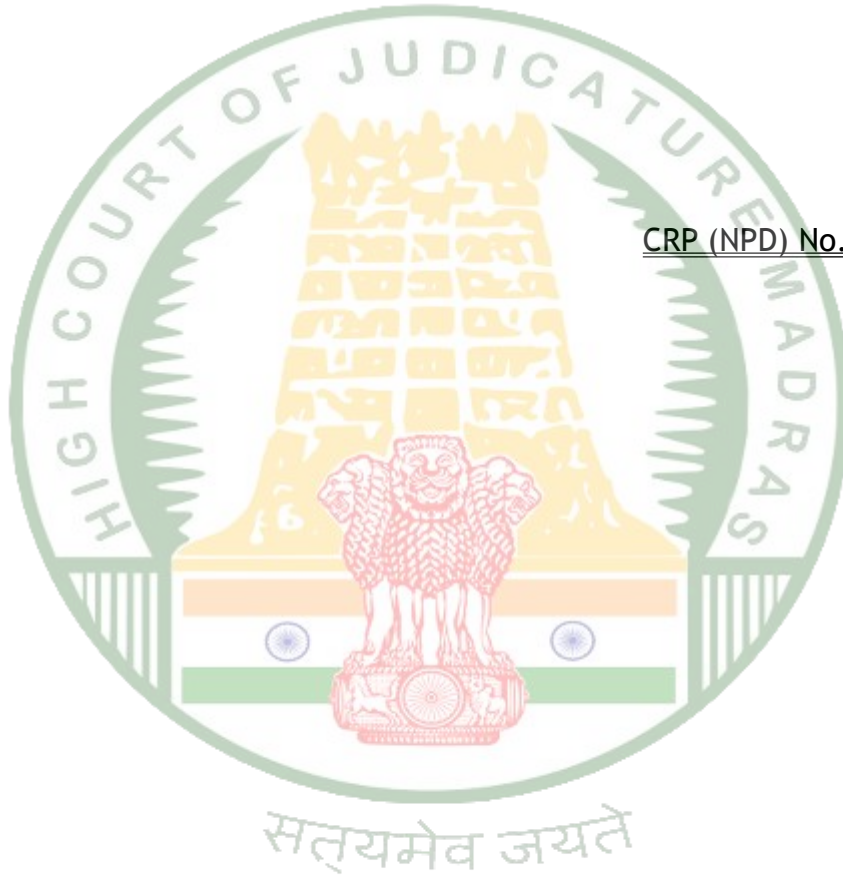
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V.M.VELUMANI,J

rna

To

The Principal Subordinate Judge,
Krishnagiri.



CRP (NPD) No.471 of 2009

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